

JACKSONVILLE POLICE DEPARTMENT

Policy: 10-9
Effective: 01-01-09
Revised: 05-23-22

STOP, ARREST, & SEARCH OF PERSONS

PURPOSE: To direct the employees of this Department on the lawful limits of authority with respect to contacts with persons.

POLICY: The policy of this Department is to protect and serve the constitutional rights of all citizens when stopping, arresting or searching individuals while balancing the needs of law enforcement in solving crime for the protection of the community.

DEFINITIONS:

- I. **PROBABLE CAUSE: (search):** Facts and circumstances based upon observations or information that would lead a reasonable law enforcement officer to believe that evidence of crime exists and that the evidence exists at the place to be searched.
- II. **PROBABLE CAUSE: (arrest):** Facts and circumstances based upon observations or information that would lead a reasonable law enforcement officer to believe that a crime has been or is being committed and the person to be arrested is the one who is or has committed the crime.
- III. **REASONABLE GROUNDS:** As used in this policy, reasonable grounds shall have the same meaning as probable cause.
- IV. **REASONABLE SUSPICION (temporarily detain):** Facts and circumstances based upon observations or information, short of probable cause but based upon articulated facts that would lead a reasonable law enforcement officer to believe that criminal activity is afoot.
- V. **REASONABLE SUSPICION (frisk):** Facts and circumstances based upon observations or information, short of probable cause but based upon articulated facts that would lead a reasonable law enforcement officer to believe that a person who is lawfully stopped is in possession of a weapon.
- VI. **FRISK (weapon):** A limited type of search where an officer may only conduct a search for weapons. With respect to a person such a search is limited to a pat-down of the subject's outer-clothing.
- VII. **STRIP SEARCH:** The removal or rearrangement of clothing that results in the exposure or observation of a portion of the genitals, the buttocks, or the breasts of a female.
- VIII. **CONSENSUAL CONTACT:** An interaction between an employee of law enforcement and the public that is voluntary in nature. The law enforcement employee has shown no authority that would cause a reasonable person to believe that they had no choice but to respond or comply with the officer's efforts. Under this type of contact an officer has no power to detain an individual who chooses not to participate in the contact.
- IX. **ARREST:** An arrest is the taking of a person into custody so that he may be held to answer for the alleged commission of a public offense.

- X. FRESH PURSUIT: Shall include fresh pursuit as defined by the common law and also the pursuit of a person who has committed a felony or who is reasonably suspected of having committed a felony in this state. It shall also include the pursuit of a person suspected of having committed a supposed felony in this state, though no felony has actually been committed, if there is reasonable ground for so believing. Fresh pursuit as used here shall not necessarily imply instant pursuit, but pursuit without unreasonable delay.
- XI. FURTIVE MOVEMENT: Done in a way that is intended to escape notice.
- XII. ORGANIZED MILITIA: A group of private citizens who train for military duty in order to be ready to defend their state or country in times of emergency. A militia is distinct from regular military forces, which are units of professional soldiers maintained both in war and peace by the federal government. The National Guard is an organized militia.

PROCEDURES:

I. CONSENSUAL CONTACT

- A. An officer may approach anyone and attempt a consensual contact.
- B. Officers are not required to have reasonable suspicion for this type of contact.
- C. Officers may not take any steps through words or conduct to stop the person's movement under this type of stop.
- D. A person cannot be compelled in any way to participate in the stop.

II. REASONABLE SUSPICION BASED STOPS/TERRY STOPS

- A. An officer who is aware of facts and circumstances that would lead a reasonable police officer to conclude that criminal activity is afoot, may stop a person, using reasonable force short of deadly force, and detain the person for a reasonable amount of time to investigate further.
- B. A law enforcement officer lawfully present in any place may, in the performance of his duties, stop and detain any person who he reasonably suspects is committing, has committed, or is about to commit:
 - 1. a felony, or
 - 2. a misdemeanor involving danger of forcible injury to persons or of appropriation of or damage to property, if such action is reasonably necessary either to obtain or verify the identification of the person or to determine the lawfulness of his conduct.
- C. An officer acting under this rule may require the person to remain in or near such place in the officer's presence for a period of not more than fifteen (15) minutes or for such time as is reasonable under the circumstances.
- D. At the end of such period the person detained shall be released without further restraint, or arrested and charged with an offense.

III. CONSENT TO SEARCH

- A. An officer may search a person without a warrant if given consent and it is given voluntarily and not obtained by force or threat.
- B. A search of an individual may be given by:
 - 1. The individual in question, or
 - 2. The individual and a parent, guardian, or a person *in loco parentis*, if the subject is under fourteen (14) years of age.

C. Officers must immediately comply with any limit or withdrawal of the consent to search.

IV. REASONABLE SUSPICION BASED FRISK (TERRY SEARCH)

A. An officer may conduct a limited frisk/pat-down of a person's outer clothing when the officer has reasonable suspicion to believe that a person who has been lawfully stopped is in possession of a weapon that poses a danger to the officer or others present.

B. Items that may support reasonable suspicion:

1. The type of crime for which the stop is based is one that would lead a reasonable officer to conclude generally involves a weapon.
2. The officer observes a bulge in the subject's clothing that has the appearance of a weapon.
3. The officer has information (anonymous tip merely providing description and location is not enough) indicating that a person is armed.
4. The officer is aware of the subject's history of carrying weapons.
5. The officer observes the subject moving as if reaching for, or attempting to hide a weapon (furtive movements).

C. Plain Feel

1. An officer may retrieve items the officer feels during the frisk under the following circumstances:
 - a. The officer is conducting a valid frisk; and
 - b. The officer feels an item he knows is not a weapon and immediately recognizes the item as evidence or contraband without making a further intrusion. Squeezing or manipulating the item during the frisk would constitute a search under this section and would therefore invalidate the seizure.
 - c. If the officer discovers something he believes to be a weapon he may remove it for further inspection.
2. The frisk is limited to a pat-down of the outer-clothing and does not include reaching into pockets etc. unless the officer feels an item during the frisk that he reasonably believes is a weapon.

V. SEARCH INCIDENT TO ARREST OF A PERSON (7.09)

A. When an officer arrests a person on the street, the officer may conduct a thorough search of the subject's person (not strip search) and the subject's immediate area of control.

B. When possible and practicable, cross-gender pat-downs and searches will be conducted by an authorized person of the same sex as the arrestee.

C. The purpose of this search is the following:

1. Protecting the officer from attack;
2. Protecting the accused or others;
3. Preventing the person from escaping;
4. Discovering or seizing the fruits of the crime for which the person has been arrested; or
5. Discovering or seizing any instruments, articles, or things that are being used or which may have been used in the commission of the crime for which the person has been arrested.

D. An officer making an arrest and the authorized officials at the police station or other place of detention to which the accused is brought may conduct a search as follows:

1. The accused person's garments and personal effects in his possession;
2. The surface of his body; and
3. The area within his immediate control.

E. Officers should conduct a thorough search of the following areas, using techniques that do not put the officer's safety in danger.

1. Hair, headbands, and hats;
2. Open mouth in plain view under tongue, roof of mouth, and back of throat;
3. Shirt collar and neck area;
4. Both arms, armpits, and shirt cuffs;
5. Chest area;
6. Back;
7. Waistline and belt;
 - a. Feel inside the waistband of clothing, between clothing and body for any hidden contraband and/or weapons; and
 - b. Remove belt and examine for compartments and customization into a weapon and/or tool, etc.
8. Crotch and buttocks area;
9. Down both legs; and
10. Socks and shoes.

VI. MOUTH SEARCHES (7.09)

- A. If an officer reasonably believes that an arrestee has concealed contraband within his mouth, an officer may reasonably order an arrestee to eject the object that he has within his mouth.
- B. Before an officer may use physical force to search an arrestee's mouth for contraband, the officer must first have all of the following simultaneously present:
 1. A lawful arrest of the person based upon probable cause;
 2. Probable cause to believe that the arrestee has concealed a seizeable item within his mouth;
 3. A clear indication that a seizeable item will be found within the arrestee's mouth; and
 4. Either a warrant authorizing an intrusion into the arrestee's mouth or exigent circumstances, such as:
 - a. Imminent destruction of evidence; or
 - b. A medical emergency.
- C. Once all the prerequisites listed in Subsection B have been satisfied, then an officer may use objectively reasonable force to extract the contraband concealed in the arrestee's mouth.
 1. In determining whether an officer's force is objectively reasonable, the officer should reasonably consider among other aspects under the totality of the circumstances, the following:
 - a. The extent to which the officer's use of force may threaten the safety and health of the arrestee;
 - b. The extent of the officer's intrusion upon the arrestee's dignitary interests in personal privacy and bodily integrity; and/or
 - c. The community's interest in fairly and accurately determining the person's guilt or innocence.
 2. In using force to extract items from an arrestee's mouth, an officer may consider among other reasonable alternatives/approaches, reasonable use of the following:
 - a. The Heimlich maneuver;
 - b. A pressure point to the hypoglossal nerve, which is underneath the exterior of the jaw on the bottom side. This action may create pain and also places upward pressure on the base of the tongue;
 - c. A pressure point to the mandibular angle, an inward pressure at the base of the jaw under the earlobe. This action may create pain that may cause the person to open his mouth and may inhibit the amount of pressure the person can use to keep his jaw closed;
 - d. Pressure to the sides of the arrestee's jaw to get his mouth to open; and/or

- e. Placing a hand on the back of the arrestee's head and compelling the person's chin to his chest to make swallowing difficult while not negatively affecting the person's ability to breath.
- 3. In an officer's use of force to extract contraband from an arrestee's mouth, it will virtually always be unreasonable to do the following:
 - a. Apply force to the arrestee's throat sufficient to prevent him from breathing or obstructing the person's blood supply to his head;
 - b. Forcibly insert fingers into the arrestee's mouth;
 - c. Place a gun to the arrestee's head;
 - d. Threaten to shoot the arrestee; and/or
 - e. Strike the arrestee on the back of the head.
- D. In the event an officer reasonably believes that an arrestee has swallowed contraband that could reasonably be foreseen to have a negative effect upon his health, then the officer shall do as follows:
 - 1. As soon as reasonable, immediately seek medical attention for the arrestee;
 - 2. Upon the arrestee being examined by medical personnel, the officer shall inform the medical personnel of the facts as known by the officer regarding the arrestee's ingestion of the contraband;
 - 3. Officers will not advise, instruct, or direct the medical personnel regarding any particular medical course of action or any medical procedure, therapy, and/or treatment;
 - 4. While medical attention is being administered to a person in custody, an officer shall remain readily available at the site of the person receiving medical attention; and/or
 - 5. If at any time, the contents that the officer reasonably believes to be contraband are inside the arrestee's mouth, stomach, etc. and exit outside of the arrestee's body, the officer shall to a reasonable extent, collect and preserve those contents as evidence.

VII. STRIP SEARCH (10.14)

- A. Pursuant to Rule 12.2, Arkansas Rules of Criminal Procedure, a strip search incidental to arrest does not require a search warrant.
- B. In order to conduct a strip search of an individual two threshold issues must be met:
 - 1. The person must first be arrested based upon probable cause to believe that person has or is committing a crime; and
 - 2. The officer must have reasonable suspicion to believe that the arrestee is concealing evidence, contraband or weapons on their person.
- C. Field: These searches shall be conducted at the police station or jail and field strip searches are prohibited.
- D. Booking: Strip searches during the booking process may only be conducted when officers can articulate reasonable suspicion to believe that the subject is concealing weapons or contraband, and only with explicit approval of a shift supervisor.
 - 1. All strip searches conducted shall be performed by persons of the same sex as the arrested person, by the least number of personnel necessary, in conformance with approved hygienic procedures, in a professional manner, and on premises where the search cannot be observed by persons not physically conducting the search.
 - 2. Where articulable reasonable suspicion exists to conduct a strip search, the arresting officer shall request authorization form a shift supervisor that clearly defines the basis for suspicion and the scope of the intended search.

3. In all cases where a strip search has been conducted, the officer will document in the initial report or supplement the following:
 - a. The name of the person searched;
 - b. The person who conducted the search;
 - c. The supervisor who authorized the search;
 - d. The offense the suspect was arrested for;
 - e. Facts and circumstances that led the officer to believe that the suspect was hiding weapons or contraband on his or her person;
 - f. The manner in which the search was conducted;
 - g. The persons that were present during the search;
 - h. The location where the search occurred; and
 - i. The items that were recovered as a result of the search.

VIII. BODY CAVITY SEARCHES (10.15)

- A. No search of any body cavity other than the mouth shall be conducted without a duly executed search warrant. Any warrant authorizing a body cavity search shall specify that:
 1. The search must be performed under sanitary conditions; and
 2. The search must be conducted by or under the supervision of a physician or registered nurse licensed in this State.
- B. Pursuant to Rule 12.3, Arkansas Rules of Criminal Procedure, a search of an accused person's blood stream, body cavities, and subcutaneous tissues conducted incidental to arrest may only be made if:
 1. There is a strong probability that it will disclose things subject to seizure and related to the offense for which the individual was arrested;
 2. It reasonably appears that a delay of obtaining a search warrant would probably result in the disappearance or destruction of the objects of the search; and
 3. A search pursuant to Rule 12.3 and conducted by a physician or a licensed nurse.
- C. A visual examination of a suspect during a search incident to arrest, a strip search and/or other information leads an officer to believe that the suspect is concealing a weapon, evidence or other contraband within a body cavity, the following procedures shall be followed:
 1. The officer shall consult with his immediate supervisor to determine whether probable cause exists to seek a search warrant for a body cavity search;
 2. The decision to seek a search warrant shall recognize that a body cavity search is highly invasive of personal privacy and is reasonable only where the suspected offense is of a serious nature and poses a threat to the safety of the officer, the detainee, the public, and security of the Department's detention operations; and
 3. If probable cause exists for a body cavity search, an affidavit for a search warrant shall be prepared that clearly defines the nature of the alleged offense and the basis for the officer's probable cause.
- D. On the basis of a search warrant, a body cavity search shall be performed only by an authorized physician or licensed nurse.
- E. The body cavity search will be conducted with a minimum of two (2) officers present, and with at least one (1) officer of the same sex. One (1) officer will perform the primary function of documentation of evidence. The subject of search will be under reasonable restraint for safety and security purposes to all involved.
- F. Body cavity searches shall be performed with due recognition of privacy and hygienic concerns previously addressed in this policy.
- G. A report will be completed by the requesting officer. Statements and any other supporting medical documentation will be obtained from the authorized persons conducting the body

cavity search.

IX. ARREST

An officer may arrest an individual if the officer has probable cause to believe that a crime has been committed and probable cause to believe that the person to be arrested is the person who committed that crime. Once probable cause is established an officer may take custody of the subject and involuntarily transport the subject.

A. Procedure on Arrest

1. Upon making an arrest, a law enforcement officer shall:
 - a. Identify himself as such unless his identity is otherwise apparent;
 - b. Inform the arrested person that he is under arrest; and
 - c. As promptly as is reasonable under the circumstances, inform the arrested person of the cause of the arrest.

B. Authority to Arrest Without Warrant. A law enforcement officer may arrest a person without a warrant if: (7.03)

1. The officer has reasonable cause to believe that such person has committed a felony;
2. The officer has reasonable cause to believe that such person has committed a traffic offense involving:
 - a. Death or physical injury to a person; or
 - b. Damage to property; or
 - c. Driving a vehicle while under the influence of any intoxicating liquor or drug;
3. The officer has reasonable cause to believe that such person has committed any violation of law in the officer's presence;
4. The officer has reasonable cause to believe that such person has committed acts which constitute a crime under the laws of this state and which constitute domestic abuse as defined by law against a family or household member and which occurred within four (4) hours preceding the arrest if no physical injury was involved or twelve (12) hours preceding the arrest if physical injury, as defined in A.C.A. §5-1-102, was involved; or
5. The officer is otherwise authorized by law.
6. When persons are arrested without warrant, commensurate with ARCP 4.1, detectives will ensure that a probable cause determination occurs promptly, but in no event longer than 48 hours from the time of arrest, unless the prosecuting attorney demonstrates a bona fide emergency or extraordinary circumstance. If detectives are unable to obtain a probable cause determination within the confines of ARCP 4.1, the arrested person will be released from custody by the appropriate detective prior to violation of this rule or the Detective will document the prosecuting attorney's articulation of the bona fide exception. (7.05)

C. Arrest with Warrant

1. Any law enforcement officer may arrest a person pursuant to a warrant in any county in the state.
2. A law enforcement officer need not have a warrant in his possession at the time of an arrest, but upon request he shall show the warrant to the accused as soon as possible. If the officer does not have the warrant in his possession at the time of the arrest, he shall inform the accused of the fact that the warrant has been issued.

D. Arrest Outside Jurisdiction of this Department: It is the policy of this Department to assist local, state and federal law enforcement agencies in their legitimate law enforcement operations when requested. To provide such assistance, employees of this Department may travel outside this jurisdiction when requested by another law enforcement agency; under the terms of a mutual aid agreement; or when acting pursuant to applicable law. (7.04)

1. An officer of this Department may make an arrest outside of this Department's jurisdiction within the State of Arkansas, Pursuant to A.C.A. §16-81-106, under the following circumstances:
 - a. Fresh pursuit;
 - b. Warrant for arrest;
 - c. When requested by a local law enforcement agency for assistance and the officer being requested is from an agency that has a written policy covering arrests outside of his jurisdiction;
 - d. When a County Sheriff requests or grants permission for an officer from a contiguous county to come into the Sheriff's county for purposes of investigating and making arrests for violation of controlled substances laws; and
 - e. For felony or misdemeanor offenses if the offense is committed within the officer's view.

X. PRIVILEGE FROM ARREST

- A. Diplomatic and Consular Immunity: Refer to Policy 10-20: Consular Notification Process.
- B. Arkansas exemptions from arrest:
 1. The organized militia shall be privileged from arrest during their attendance at muster and attendance at drills and in going to and returning from attendance at muster and drills in all cases except treason, felony, and breach of the peace;
 2. The volunteer and militia forces shall in all cases (except treason, felony and breach of the peace) be privileged from arrest during their attendance at muster and the election of officers, and in going to and returning from the same;
 3. All witnesses shall be privileged from arrest in all cases except treason, felony, or breach of the peace during their attendance on any court where their attendance is required by subpoena, and going to and returning from the place where they may be required to appear to testify, allowing one (1) day for every twenty-five (25) miles from their residence;
 4. The members of the Senate and House of Representatives, the clerks, sergeants-at-arms, and the doorkeepers of each branch of the General Assembly shall be privileged from arrest during the session of the General Assembly and for fifteen (15) days before the commencement and after the termination of each session;
 5. All persons qualified to vote for representatives in the General Assembly shall be privileged from arrest during their attendance at any election and while on their way going to and returning from the election;
 6. No person shall be arrested while doing militia duty under the order of his commanding officer or while going to or returning from the place of duty or parade;
 7. No person shall be arrested in the Senate Chamber and/or House of Representatives during their sitting, or in any court of justice during the sitting of the court;
 8. Nothing contained in this Section shall be so construed as to extend to cases of treason, felony, or breach of the peace or to privilege any person named from being served at any time or place specified in this Section with a summons or notice to appear; and
 9. Electors shall, in all cases (except treason, felony and breach of the peace,) be privileged from arrest during their attendance at elections, and going to and from the same.

XI. ALTERNATIVES TO ARREST

- A. Under the authority of the Chief of Police, officers may exercise discretion in certain situations to the extent that an alternative to arrest may be employed to resolve a situation. Warnings, referrals, informal resolutions, summonses, and citations shall be considered departmentally

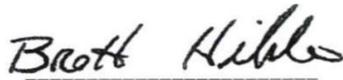
approved alternatives to arrest. These alternatives must respect the rights of the parties involved and must accomplish a police purpose. Some of these alternatives may include, but are not limited to:

1. Citations and Summons: These are formal enforcement procedures which constitute alternatives to arrest solely by the fact that they may be used to preclude physical custody or less severe enforcement options.
2. Warnings: Officers may exercise discretion in minor traffic and ordinance violations by delivering verbal warnings or written warnings using the departmental warning ticket.
3. Referrals (used in lieu of formal action): Referrals may be made to other departmental components, other police or governmental agencies, social services agencies, or other organizations better suited to redress the problem(s).
4. Informal Resolutions: The interests of the parties involved are often satisfied better by a mediated settlement, on the scene, rather than a formal prosecution in court. Resolution of this nature should be by agreement with the affected parties and should not be employed as an excuse for not making an arrest.

XII. ARCP 8.1 PROMPT FIRST APPEARANCE (7.05)

An arrested person who is not released by citation or other lawful manner shall be taken before a judicial officer without unnecessary delay for a prompt first appearance. Typically this should be accomplished within 72 hours.

ALEAP: 7.02; 7.03; 7.04; 7.05; 7.09; 10.14; 10.15



Brett C. Hibbs
Chief of Police