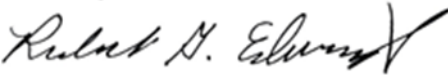




**RICHMOND POLICE DEPARTMENT
GENERAL ORDER**



Subject: CONSTITUTIONAL RIGHTS		Chapter 1	Number 2	Pages 10
References: CALEA Standards: 1.2.3a, 1.2.3b, 1.2.3c, 44.2.3	Related Orders: General Order <i>01-06, 06-26, 07-18</i> <i>Operational Manual 10-01, 11-08</i>		Effective Date: <i>12/4/2024</i> Revised By: <i>PD 132</i> Prv. Rev. Date: <i>01/06/2021</i>	
<i>If any provision of this General Order conflicts with any collective bargaining article, the collective bargaining agreement shall govern.</i>				
Chief of Police:				
				

I. PURPOSE

The purpose of this directive is to define the authority of officers to arrest with and without a warrant, establish the policy and procedure for receiving admissions and confessions, establish the policy and procedures for safeguarding the constitutional civil rights of each person having contact with the Department without regard to race, creed, national origin, gender, sexual orientation, age or economic status, and to help officers determine when field interviews are necessary and useful and establish procedures for conducting them safely.

II. SUMMARY OF CHANGE

This revision inserts language related to the data collection required by the Virginia Community Policing Act and makes minor grammatical corrections. New changes are bold and italicized throughout the text.

III. POLICY

All citizens of this country, under the Constitution, are guaranteed certain basic rights. It is the policy of the Richmond Police Department to safeguard these rights without bias, and to follow all laws and Department policies, procedures, and regulations to ensure that these safeguards shall not be denied any citizen. It is also the policy of the Department to ensure the preservation of evidence and protect constitutional rights of arrestees. All sworn Department employees shall familiarize themselves with the laws, Department policies, procedures, and regulations pertaining to civil rights.

Short of the application of force, an arrest is the most serious action an officer can undertake. The most important legal question facing an officer at the moment of arrest is the existence of probable cause; without probable cause, the arrest is illegal and the evidence of criminality that was obtained because of the illegal arrest is inadmissible. Officers shall, accordingly, exercise critical judgment in making arrests. Critical judgment includes consideration for bystanders, the time, place and location of offenses and the use of force in making the arrests. Officers shall consider alternatives to arrest consistent with the law enforcement mission.

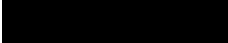
The Department expects and encourages officers to conduct field interviews. Field interviews are important contacts with citizens that aid in preventing and investigating crime. Technically, a field interview is a lawful stop of a citizen for investigative purposes. Officers shall document stops for the purposes of identifying suspects, witnesses, or victims for crime prevention, intelligence gathering, and community relations. The Department expects officers to gather such information with proper observance of constitutional safeguards. Field interviews frequently contribute to establishing the reasonable suspicion or probable cause to arrest or conduct a search. The agency should ensure that all applicable regulations and laws that apply to interrogations and access to counsel are followed. [CALEA 1.2.3]

IV. ACCOUNTABILITY STATEMENT

All employees are expected to fully comply with the guidelines and timelines set forth in this general order. Failure to comply will result in appropriate corrective action. Responsibility rests with the Division Commander 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.

V. DEFINITIONS

- A. **ARREST** – An arrest is a seizure of a person. An arrest must be supported by probable cause.
- B. **FIELD INTERVIEW** – A consensual encounter with a person to determine person's identity and to resolve suspicions about possible criminal activity. A field interview resolves an ambiguous situation. A field interview contrasts with a stop which is based on reasonable suspicion of criminal behavior, that is to say a reasonable person would feel free to leave.
- C.  – The Records Management System (RMS) used by the Department.
- D. **PROBABLE CAUSE** – According to the U.S. Supreme Court; *p*robable cause exists when the facts and circumstances within the arresting officer's knowledge and of which the arresting officer had reasonable trustworthy information are sufficient in themselves to warrant a man of reasonable caution to believe that an offense has been or is being committed by the suspect.
- E. **REASONABLE SUSPICION** – Articulable facts which lead an officer to reasonably suspect that a crime has been or is about to be committed. A well-founded suspicion based on the totality of circumstances and does not exist unless it can be articulated.
- F. **STOP** – The detention of a subject for a brief period. To make a stop, the officer must have reasonable suspicion to believe that criminal activity is afoot and that the person to be stopped is involved. A stop is an investigative detention. The following characteristics may, under the circumstances, give rise to reasonable suspicion for the stop:
 - 1. A person fits the description on a wanted notice;

2. A person has exhibited furtive conduct such as fleeing from the presence of an officer or attempting to conceal an object from the officer's view;
3. The appearance, behavior or actions of the suspect suggests that *the suspect* is committing a crime;
4. The time of day or night is inappropriate for the suspect's presence in a particular area;
5. The officer observes a vehicle that is similar to that of a broadcast description for a known offense;
6. A person exhibits unusual behavior such as staggering or appearing to be in need of medical attention;
7. The suspect is in a place proximate in time and location to an alleged crime; and,
8. The suspect is carrying an unusual object or *the suspect's* clothing bulges in a manner consistent with carrying a weapon.

VI. PROCEDURE

A. Arrest:

All citizens of the United States are guaranteed protection against unlawful arrest.

1. Department members shall uphold these rights by taking a person into custody only when there are reasonable grounds to believe that:
 - a) An arrest warrant is confirmed by the issuing jurisdiction for the person being taken into custody; or,
 - b) The officer is in compliance with any of the provisions of VA Code §19.2-81, which states generally that:

An "officer may arrest without a warrant any person who commits any crime in the presence of the officer and any person whom he has reasonable grounds or probable cause to suspect of having committed a felony not in his presence."
2. An officer can make an arrest without a warrant of any person at a traffic accident scene or at a hospital or medical facility to which any person involved in such accident has been transported, upon reasonable grounds to believe, based upon personal investigation, including information obtained from eyewitnesses, that a crime has been committed by any person then and there present.
3. An officer may arrest for a misdemeanor, not committed in *their* presence, in the following cases:
 - a) Shoplifting;
 - b) Carrying a weapon on school property;

- c) Brandishing a firearm;
 - d) Destruction of property located on business/commercial premises; or,
 - e) Assault and battery.
4. An officer may arrest without a warrant for:
- a) Assault and battery against a family or household member;
 - b) Violation of a stalking protective order; or,
 - c) Violation of any provision of a protective order regardless of whether such violation was committed in *the officer's* presence, if such arrest is based on probable cause, upon personal observations, the reasonable complaint of a person who observed the alleged offense or upon personal investigation.
5. Once a person is arrested, *the arrestee* shall be taken, forthwith, before a Magistrate where *the arrestee's* rights shall be explained.
6. Department members shall, at all times, be aware of a prisoner's rights and shall:
- a) Expedite all necessary processing so that the prisoner shall not be detained any longer than necessary;
 - b) Never use force, coercion or other illegal or unethical procedures in seeking admissions of guilt or confessions;
 - c) Recognize and respect the prisoner's right to refuse to give evidence against *themselves*. However, there is no encroachment upon a prisoner's rights if *the prisoner* voluntarily supplies such information; **and,**
 - d) **Be** aware that special circumstances surround juvenile arrestees. In addition to the above mentioned procedures, the following shall also apply when a juvenile is in a custodial interrogation situation:

[CALEA 44.2.3]

- (i) ***The officer shall notify the parent/guardian of the arrest and the juvenile shall have contact with the parent/guardian before any interrogation, with limited exceptions listed in VA Code § 16.2-247.1(B).***
- (ii) The duration of any interrogation or interview and the number of officers engaging in the interrogation or interview shall be limited based on reasonableness considering the totality of the circumstances surrounding the interrogation or interview;
- (iii) The Department member may need to explain the agency's procedures and the juvenile justice system's procedures to the juvenile(s) being interrogated or interviewed; and

- (iv) For additional information concerning Juvenile Procedures, refer to General Order 07-18, Juvenile, Truancy and Curfew Procedures.

B. Field Interviews or Stops:

1. Making the field interview or stop (general): [CALEA 1.2.3a]

- a) An officer may conduct field interviews or stops when *the officer* reasonably believes that some investigative inquiry is warranted. The Supreme Court has ruled that an officer “may in appropriate circumstances and in an appropriate manner approach a person for the purposes of investigating possible criminal behavior even though there is not probable cause to make an arrest.” *Terry v. Ohio, 392 U.S. 1, 22 (1968).*
- b) A field interview requires voluntary cooperation from the citizen. In the absence of probable cause to arrest, the citizen may discontinue the interview at any time and leave. The citizen may also refuse to produce identification or otherwise identify *themselves*.

NOTE: A distinction is drawn herein between a field interview and a stop.

- c) A stop is a brief detention of a person because of suspected criminal behavior.
- d) An officer must be able to articulate the circumstances that warranted an interview or stop of the citizen. The circumstances may constitute the officer’s reasonable suspicion. In court—should a field interview or stop result in an arrest, an officer must justify his intrusion by describing “specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion.” *Terry v. Ohio, 392 U.S. at 21.*

Articulable circumstances derive from:

- (1) Firsthand observations;
 - (2) Hearsay, as from reliable informants;
 - (3) “Collective knowledge” or information shared by several officers; and,
 - (4) The totality of facts and circumstances.
2. Field interviews and field interview reports serve as:
- a) A source of information;
 - b) A means of identifying the suspect; and,
 - c) A means of obtaining suspects and/or witnesses.

3. Place of the interview:

- a) As a general rule, field interviews may be conducted anywhere the officer has a right to be, including:
 - (1) City of Richmond-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 an immediate law enforcement presence to protect life, well-being or property;
 - (5) Areas where an officer may be admitted pursuant to a lawful arrest or search warrant; and,
 - (6) Any other area in which an officer may effect a warrantless arrest.
 - b) Field contacts shall not be done to coerce a person to leave an area or place where ***the person*** has a legitimate right to be and where no violation of law has occurred.
4. Conducting field interviews:
- a) Officers shall clearly identify themselves and, if not in uniform, display identification.
 - b) Officers shall be cognizant of the distinction between a field interview and a stop and the fact that the distinction depends largely on whether, under the circumstances, the citizen perceives that ***they are*** free to leave. Officers shall comply with the following guidelines:
 - (1) Abrupt, short responses that could be misunderstood and requests which could be misinterpreted as commands must be avoided.
 - (2) The duration of the interview should be as brief as possible.
 - (3) During the interview, officers should confine their questions to those concerning the suspect's identity, place of residence and other matters necessary to resolve the officer's suspicions.
 - (4) Miranda warnings are not required during field interviews. The warnings are not required until custodial questioning takes place.
 - (5) If, during a field interview, a person asks whether ***they*** must respond or indicates that ***the person*** feels compelled to respond, the officer shall immediately inform ***the person*** of ***their*** right to refuse, as well as ***the right to leave***.
5. Recording the Field Interview ***or Stop***:

- a) To achieve the mission of enhancing the capabilities of [REDACTED], officers shall use Mobile Field Reporting (MFR) for data entry of field contact/interview information.
6. Pat Downs – see General Order 1-6, Search and Seizure – *Searches of Persons* for the guidelines on conducting frisks pursuant to Terry v. Ohio (1968).
 7. **Virginia Community Policing Act Data Collection:**
 - a) ***Officers will be required to collect data pertaining to (i) all investigatory motor vehicle stops, (ii) stop-and-frisks of a person based on reasonable suspicion, and (iii) on all other investigatory detentions that do not result in an arrest or the issuance of a summons, pursuant to VA Code § 52-30.2.***
 - b) ***Officers shall input this data utilizing the desktop icon “Citizen Contact” or following the link [REDACTED]. This data will be entered prior to the officer clearing from the call, or prior to their end of tour if the officer does not have an MDT or mobile device to utilize during the call. The officer will utilize the clearing code [REDACTED] (along with any other applicable clearing codes) to indicate the completion of the data collection form.***
 - (1) ***Data collected shall include:***
 - (a) ***Race, ethnicity, age, gender of the person stopped, and whether the person stopped spoke English;***
 - (b) ***Reason for the stop;***
 - (c) ***Location of the stop;***
 - (d) ***Whether a warning, written citation, or summons was issued or an arrest was made, warning provided, violation charged, or crime charged;***
 - (e) ***Whether the vehicle or any person was searched; and***
 - (f) ***Whether the officer used physical force against any person and whether any person used physical force against any officers.***
 - (2) ***Pursuant to VA Code § 15.2-1722.1, all captured data in the Community Policing Data Collection System will be available to the public on the City’s RVA.gov website for review.***

C. Admissions/Confessions:

1. Notification of Rights:

[CALEA 1.2.3b]

- a) Any individual in a custodial interrogation, regardless of the severity of the crime, is entitled to the benefit of the procedural safeguards set forth in Miranda vs. Arizona (1966). (See also Berkemer vs. McCarty, (1984)).

NOTE: The appointment of counsel pursuant to the Fifth Amendment right identified in Miranda is not charge specific. Thus, further police-

initiated interrogation, on any subject, in the absence of counsel is **BARRED** once the individual requests counsel.

- b) By reading the admonition stated on the PD-75 (Notification of Rights Form) to the individual, officers comply with the legal requirements covering on-scene arrests and interrogation procedures.
- c) If the individual's primary language is one other than English, the interrogating officer(s) may use the AT&T language line to ensure understanding. Officers should also be aware that the Spanish interpretation of the PD-75 form is on the Department's server in the PD forms folder.
- d) If the individual is a hearing-impaired person, an interpreter shall explain these rights during an interview and/or interrogation prior to the individual's statement as set forth in General Order 6-26, Sign Language Interpretation for Deaf and Hearing-Impaired Persons. Officers should be aware that the PD-75 is to be used.

2. Constitutional Rights Advisement:

- a) The individual has an absolute right to remain silent, and the admonition must be in clear and unequivocal terms.
 - (1) This admonition is to be made because often people are unaware of this privilege, and it assists them in making an intelligent decision as to its exercise.
 - (2) The admonition is an absolute prerequisite to overcome inherent pressures of the interrogation atmosphere.
 - (3) The admonition must show the accused that the interrogators are prepared to recognize the privilege.
- b) It must be explained to the individual that anything said can and will be used against the individual in court.
 - (1) This is to make the **individual** aware of the privilege or the right to remain silent and the consequence of foregoing it.
 - (2) In addition, this is to make the accused aware that **they are** not in the presence of persons acting solely in their interest.
- c) The individual must be clearly informed that **they have** a right to consult a lawyer and to have that lawyer with **them** during the interrogation. The accused must be warned not only that **they have** a right to consult with an attorney but also that, if **they are** indigent, a lawyer will be appointed to represent **them**.
- d) If the individual unambiguously indicates that **they** wish the assistance of counsel before any interrogation occurs, then the police cannot ignore or

deny the request on the basis that the individual does not have or cannot afford to retain an attorney.

- e) The United States Supreme Court has stated that if an individual unambiguously indicates in any manner at any time prior to or during questioning that **they** want an attorney, the interrogation must cease immediately. This does not mean that an attorney must be appointed for an indigent person at that time, but it does mean that the interrogation must stop until an attorney is retained or appointed.
- f) When a person has been arraigned and has had counsel retained or appointed, the arrestee can no longer be questioned by the police without **their** counsel's consent. However, if a person has been arrested but not yet arraigned and the person has not clearly and unambiguously invoked his right to counsel, then police may question that individual.
- g) A waiver of rights cannot be based on the silence of the accused. **An individual** must affirmatively make a voluntary and intelligent waiver. A waiver of these rights shall not be presumed, but the burden rests on the State **to** confirm that the accused knew, and intelligently waived, **their** privilege against self-incrimination, and **their** right to retain or be appointed counsel. Officers shall be familiar with the Rights Waiver Card and maintain in their possession a copy of the Rights Waiver Card. [CALEA 1.2.3c]
- h) When a person has invoked **their** right to counsel under *Miranda*; they can be re-interrogated for the specific crime in which *Miranda* was invoked on when there has been a minimum of a 14-day break in custody, between attempts of interrogation. The break in custody shall satisfy "any residual coercive effects of **their** prior custody," after having given *Miranda* warnings. *Maryland v. Shatzer*, 559 U.S. 98 (2010).
- i) The Totality of Circumstances:
 - (1) Determining whether the individual's statements are made voluntarily is based on the totality of the circumstances.
 - (2) To be considered voluntary, the individual's statements must be a product of the individual's own free will and not a result of police coercion or the imposition of an overriding will by the police. In other words, if an innocent person would not have confessed or made statements absent police conduct then the confession or statements are not voluntary.
 - (3) There shall be no threats or cajolery in obtaining the waiver or a confession **or promises made as to the outcome of a case**.
 - (4) Factors to be considered in the totality of the circumstances are as follows:
 - (a) Number of police present;

- (b) Place of the confession;
- (c) Age and mentality of the defendant;
- (d) Educational background of the defendant;
- (e) Public display of defendant as to radio, television and newspaper releases;
- (f) Length of the interrogation; or,
- (g) Other matters that might leave the impression that the confession was not voluntary.

D. Freedom of Speech and Assembly:

1. All citizens of the United States are guaranteed the right to seek redress of grievances by:
 - a) Freedom of speech;
 - b) Peaceful assembly; *and*,
 - c) Peaceful picketing
2. The exercise of these rights must not:
 - a) Conflict with the governmental responsibility to keep public streets and public facilities open and available for public use;
 - b) Violate any law or ordinance; or,
 - c) Include the use of inflammatory remarks related to any instance where a clear and present danger of a riot against any person or group of persons exists.

NOTE: See also Operational Manual 10-01, Emergency Operations Plan *and 11-08, Crowd Management Team.*

- E. Every necessary resource of the Department will be employed to rapidly and decisively enforce statutes and ordinances that provide for the protection of the rights and property of all citizens. Within reason, the Department shall ensure that adequate manpower, including supervisory personnel, is available to control and maintain order in every instance where crowds have formed or are expected to form.

VII. FORMS

- A. PD-75, Rights *Wavier* Form (English and Spanish languages)