

Search and Seizure Introduction

Cleveland Division of Police



Course Date: July

Current Revision Date: 8-6-2021

Course Hours: 3 Hours

Primary Audience: All Members of the Cleveland Division of Police

Module Goal: Using multiple aspects of adult-learning theory, members will apply search and seizure policies during scenario-based training exercises

REFERENCES

1. Legal Guide for Police Constitutional Issues 10th edition, Jeffery t. Walker and Craig Hemmens
2. Miller et al. (2004). *Public opinions of the police: The influence of friends, family, and news media*. Washington, DC: National Institute of Justice.
3. Ultimate Supreme Court Legal Reference, Blue to gold law enforcement training LLC
4. OPOTA 2.3 Arrest, Search and Seizure January 1, 2018
5. General Police Order 2.02.01 Investigatory Stops
6. General Police Order 2.01.02 Search and Seizure
7. General Police Order 2.02.03 Miranda Warning and Waiver
8. General Police Order 3.04.01 Probable Cause-Warrantless Arrest
9. https://www.law.cornell.edu/constitution/fourth_amendment
10. <https://www.justice.gov/crs/file/836486/download>

COURSE MATERIALS

TEACHING AIDS

 X Erasable Board/Markers

 X Easel/Notepads

 X Lectern/Table

 X Other:

 X Student Handouts

Handout #1
Handout #1A
Test

INSTRUCTIONAL TECHNIQUES

 X Lecture

 X Group Discussion

 Demonstration

 X Scenario-based Training

 X Individual Exercise

 Hands-on Techniques

 X Problem Solving

STUDENT PERFORMANCE OBJECTIVES

1. Identify consequences of failure to follow clearly established case law.
2. Identify what triggers a Fourth Amendment analysis.
3. Explain open view searches.
4. Identify what things need to be considered in requesting consent.
5. Determine when a person can revoke or refuse consent.
6. Reinforce that officers shall not physically or mentally coerce, threaten or intimidate an individual to gain consent.
7. Describe what determines an exigent circumstance.
8. Describe what may convert a consensual encounter into a seizure.
9. Identify when an officer is required to perform a 360 walk around of a vehicle.
10. Describe the difference between curtilage and open fields.
11. Describe what is based on facts known to the officer and the circumstances that existed prior to the stop.
12. Identify information to be considered alone or in conjunction with other evidence in determining reasonable grounds to make an arrest.
13. Identify when officers are required to complete a stops data collection form.
14. Identify when a reviewing supervisor shall disapprove a stops data collection form.

I. LESSON PLAN

V. Roll Call

A. Will be given by a supervisor (If no Training Section supervisors are available, a supervisor approved by the Training Section)

B. The supervisor shall

1. Welcome everyone to CDP's search and seizure policy training.

2. Check attendance and ensure everyone has signed in.

3. Require students to place cell phones on silent and put them away. Indicate that usage is prohibited unless on a designated break or permission by an instructor is given.

4. Advise students no food allowed eating during training.

C. "You are expected to take an active role and participate in the class discussion and scenario-based training.

D. If you refuse to participate you will be sent back to your district/unit and your Commander will be notified.

E. This training was designed to increase your understanding of search and seizure policies and clearly established case law

F. If you disagree with an instructor or another officer, you are free to respectfully voice your opinion.

G. Once the training is completed, the Training Section shall send out mandatory surveys of the training. You will not receive credit for the training until the survey is complete.

H. This is your training, if there is something you feel can be improved or lacking, please reach out to the Training Section.

Confirm everyone has signed into the class

Surveys are anonymous

- I. If there are scenarios or situations that you feel have training value, we can add it to future trainings.”

VI. Class Lecture

- A. The lead instructor shall explain how the training event will proceed:

1. The training will be one day,
2. There will be a lecture-based class with large group and small group discussions; there will also be problem-based questions,
3. This lecture includes a worksheet in which students are expected to work in small groups to complete,
4. After lunch, the class breaks into 2 groups:
 - a. Group number 1 shall complete a video assessment.
 - b. Group number 2 shall complete two tabletop exercises.
 - c. Each module shall last 1 hour and 20 minutes.
 - d. The groups will then switch modules.

5. The daily schedule is below:

0800-1100	Classroom portion
1100-1200	Lunch
1200-1320	Module #1
1330-1450	Module #2
1500-1600	Test and review

- VII. The instructor shall explain to the class the below information:

At this point in the lecture portion it will be turned over to the lead instructor

Keep in mind that the job of the instructor is to facilitate learning. Be prepared to facilitate discussions with students to ensure they understand the student performance objectives.

Throughout the lesson, reinforce the use of the WCS GPO 4.06.04

<p>A. Cleveland Police Mission Statement</p> <p>B. The Training Section continues its mission to provide up-to-date training using adult-learning theory to the members of the Division. Well trained officers provide better service to the people of the communities in which they serve.</p> <p>C. The Academy Unit continues its mission to provide training by incorporating the Cleveland Division of Police General Police Orders, the United States Constitution, and the values and expectations of our local Cleveland communities.</p> <p>D. This course serves as a basis to make students more knowledgeable at search and seizure</p> <div data-bbox="240 863 1125 957" style="border: 1px solid black; padding: 5px; margin: 10px 0;"> <p>Question to class: “Why is this training important to you?” Answer below:</p> </div> <p>E. Consequences for failure to follow clearly established search and seizure guidelines include but are not limited to:</p> <ol style="list-style-type: none"> 1. Loss of evidence or cases <ol style="list-style-type: none"> a. Failure to follow policy or case law can result in the exclusion of evidence from criminal cases or defendants not being charged. 2. Civil liability <ol style="list-style-type: none"> a. Officers may be held civilly liable for failing to follow case law, policy or training. b. A claim of a wrongful seizure, arrest or search by an officer can be devastating to the officer, agency and public trust. c. The officer and the department may be subject to lawsuit(s). 	<p><i>OPOTA Arrest, search and seizure 2-3</i></p> <p><i>https://www.justice.gov/crs/file/836486/download</i></p>
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<p>3. Loss of public trust</p> <ul style="list-style-type: none"> a. Strong relationships of mutual trust between police agencies and their communities are critical to maintaining public safety and effective policing b. Research demonstrates that decreasing negative encounters with citizens may actually improve public opinion further than increasing the number of positive encounters 	<p><i>(Miller et al., 2003)</i></p> <p>https://www.law.cornell.edu/constitution/fourth_amendment</p>
<p>IV. Constitutional Requirements</p> <ul style="list-style-type: none"> A. The Fourth Amendment B. The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized. C. It is important to have a clear understanding of the Fourth Amendment, including what it protects, when it is triggered, and its related concepts. 	<p><i>Article 1, paragraph 14 Ohio Constitution</i></p>
<p>VIII. Ohio Constitution, Article 1, paragraph 14</p> <ul style="list-style-type: none"> A. The right of the people to be secure in their persons, houses, papers, and possessions, against unreasonable searches and seizures shall not be violated; and no warrant shall issue, but upon probable cause, supported by oath or affirmation, particularly describing the place to be searched and the person and things to be seized. B. Throughout this training we are going to discuss The Division's policies, case law, exceptions to the search warrant requirement, articulating probable cause and reasonable suspicion. 	<p><i>OPOTA Arrest, search and seizure 2-3</i></p>

IX. Application of search and seizure GPOs to daily police duties

- A. An officer's actions of detaining a suspect for investigation, making an arrest, or bringing a suspect under control through the use of force triggers an analysis for reasonableness under the Fourth Amendment of the United States Constitution**
- B. Searches and seizures generally must be made pursuant to a warrant. The constitutional "rule" requires a warrant for any search or seizure. In order to make any search or seizure without a warrant, you must have a valid exception. We discuss those exceptions in this training.
- C. Obtaining a warrant not only serves to protect the rights of the citizen, but also the validity of the search and arrest.
- D. The use of a warrant may protect the officer from civil liability and increase the likelihood of keeping evidence admissible
- E. Every warrantless search or seizure performed during the course of your duties is "per se" unreasonable.
- F. Understandably, officers work in a dynamic and at often times rapidly evolving situation. Obtaining a warrant may not always be feasible so the court has set out certain "exceptions" to the warrant requirement.
- G. It is the officer's responsibility to clearly articulate the valid reasons as to why it was necessary to perform a search without first obtaining a warrant.

What are some exceptions to the search warrant requirement?
Answers below

- H. According to GPO 2.02.02, exceptions when searches may be made without a warrant include:

- 1. Open view and plain view searches
- 2. Consent searches

***Search and Seizure
GPO 2.02.02, I***

<ol style="list-style-type: none"> 3. Exigent circumstances 4. Pat down/frisks during investigatory stop 5. Custodial searches/other searches incident to arrest 6.Vehicle inventory searches 7.Open fields 	<p>The officer must have probable cause to believe the item is contraband or evidence of a crime</p>
<p>X. Open view or plain view</p> <ol style="list-style-type: none"> A. If an officer is lawfully in a constitutionally protected area and sees something believed to be contraband, he/she may seize that contraband without a warrant B. Class Question, has anyone ever had experiences or prior cases which they relied on plain view seizures? Elicit answers from student officers. <ol style="list-style-type: none"> 1.Have class determine if the following two incidents apply to the Plain View exception to obtaining a warrant. 2.Example 1: <ol style="list-style-type: none"> a. Officers are called to a home for a medical emergency. A concerned family member tells officer(s) to enter the house and help her son. Officers find a male sitting in the family den complaining of chest pain. Officers see in a kilo of cocaine sitting on the top of the table, not in a drawer nor in a closed container. After administering first aid and calling EMS. b. Who says it can be seized? Who says it cannot? Elicit feedback from student officers. 	<p>All officers assigned a WCS, while in the field, shall activate their camera prior to responding to all calls for service, prior to all investigative or enforcement contacts with the public, or other contact with the public that may or does become adversarial after the initial contact</p>

- c. Under plain view, officers may seize the powder due to the fact they have a lawful reason to be in a constitutionally protected area (the house).
- d. Once the discovery is made, officers may have probable cause to seek a search warrant for a more thorough search

3. Example 2:

- a. Officers are on a park walk and talk and observe in plain view marijuana plants in someone's large front window.
- b. Can the officers seize the plants from the house? Why or why not? (Give time for answers)
- c. Answer: Officers cannot seize these items under plain view because going into the house is another level of intrusion. To gain lawful access to the house, officers would need a search warrant.

***Improper handling
of weapons in a
vehicle (ORC
2923.16)***

Question to the class

"You perform a traffic stop incident to a traffic code violation. You see in plain view a firearm sitting on the back seat with a magazine in the weapon.

Can you seize that weapon under plain view? Why or why not?"
See answers below:

4. Answer, it depends. Under what circumstances is it legal or illegal?

- a. In Ohio, the Concealed Handgun License (CHL) (also known as CCW) law allows for drivers to carry or store a loaded firearm anywhere in the vehicle.
- b. If the driver does not have a CHL.
- c. Answer is yes you can seize the weapon.

- d. The contraband is immediately recognizable as a loaded firearm. This would be improper handling of weapons in a vehicle (ORC 2923.16)

Class Question-break the class into small groups of 4-6 and ask the following question:

1. A neighbor called and reported a domestic disturbance. The neighbor stated people are yelling in the upstairs apartment. Officers knock on the apartment above. The owner answers and refuses to give consent to search initially. Officers ensure the man they are only looking for victims. The male complies and during the search officers find no victims or evidence. One officer notices two sets of expensive stereo components, which seemed out of place in the filthy, four-room apartment. Suspecting that they were stolen, the officer read and recorded their serial numbers. To retrieve some of the serial numbers, he had to move some of the components. He then called into radio to check the numbers. They advised that some of the equipment had been taken in an armed robbery, so the officers seized it immediately.
2. Was this lawful? Why or Why not?
 - a. No, moving equipment was a search separate from the search that was the lawful objective of entering the apartment, and the information obtained in moving the equipment was not in plain view.

***Arizona V Hicks
480 U.S. 321 (1987)
details adjusted for
this lesson plan***

XI. Consent searches

- A. A consent search is when a law enforcement officer requests permission from an individual to perform a search; keep in mind an individual can lawfully refuse a consent search.
- B. Because the person is in effect waiving their Fourth Amendment rights by allowing the police to conduct a search without a warrant, there are protective requirements in place for a consent search to be valid.

Question to the class

“As law enforcement officers, what are things we need to consider when requesting consent?”

See answers below

C. Age

D. Ensure the child has the ability to understand the situation.

E. It is the policy of the Division of Police to ensure that youth shall be afforded their constitutional and statutory rights when being questioned, searched, detained, or arrested. Youth shall be informed of their rights in an age-appropriate manner and treated with courtesy, professionalism, dignity, respect, and equality.

F. Intelligence

G. Education

H. The authority of the person providing consent:

1. Officers have the burden of proof to distinguish if the person giving consent has the authority.

I. Advise students of GPO 2.02.02 (II A) Where an officer seeks consent for a search, the officer shall inform the person in an age-appropriate manner, of his or her right to refuse and to revoke consent at anytime

J. A person's consent to search shall be documented using their Wearable Camera System (WCS).

K. Officers electing to search by consent may also have the consenting person sign the Consent to Search form.

L. Officers must ensure that an individual is consenting to the search voluntarily.

M. There is a scope to consent:

Interactions with youth GPO 5.12.01

Age-appropriate - a term used to reflect a general understanding of the social, emotional, physical, neurological, behavioral, and moral aspects of development in an individual under 18 years of age

GPO 2.02.02 (II A)

<p>1.If asking a resident to search their home for a suspect in an aggravated robbery and they give you consent to do so, that does not authorize you to look in drawers and small spaces that could not reasonably hold a person.</p> <p>N. Officers shall not physically or mentally coerce, threaten or exploit an individual in order to gain consent for a search. Officers doing so may be subject to departmental discipline and/or civil or criminal penalties.</p> <p>O. Be very mindful when asking for consent to search.</p> <p>P. If a reasonable person would not feel they can refuse, your search may be deemed unlawful.</p> <p>Q. Consent must be positively given, meaning an individual has to know and understand what you are doing as an officer and give you consent to do so.</p> <p>R. Always be aware of what may convert your consensual encounter into a seizure including but not limited to:</p> <ol style="list-style-type: none"> 1.Tone of voice 2.Numbers of officers present 3.Oscillating lights 4.Do not threaten to get a warrant, contact 696-kids or any such coercive tactic 5.Officers can provide the individual with a justified legal truth such as: “I understand you do not want me to search your home. However, I am contacting the detective bureau to obtain a warrant from a judge.” The key to this, is it must be a legal truth. You must be in the process or about to get a warrant and know that you have at least enough probable cause that a judge will issue a warrant. <p>S. An example of a consent search would be during a call for service you request consent to search a home looking for a suspect in a recent crime.</p>	<p>OPOTA arrest, search and seizure 2-3</p>
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<p>T. Advise the students to keep the below information in mind with regards to third party consent searches</p> <p>U. Consent is valid if the third person has common authority over the area to be searched;</p> <p>V. Consent to search is not allowed if one cohabitant (roommate) or business partner objects to the consent, even if the other person gives permission;</p> <p>W. Consent must be given by both people, if present. Parents may consent to search a child's living area if the parents have routine access to the area (the child is not paying rent);</p> <p>X. Landlords cannot give consent to search if a lease or rental agreement is still valid.</p>	<p><i>Search and Seizure GPO 2.02.02 III, E</i></p> <p><i>Georgia v. Randolph, 547 U.S. 103 (2006)</i></p>
<p>XII. Exigent Circumstances</p> <div data-bbox="207 984 1135 1159" style="border: 1px solid black; padding: 10px; margin: 10px 0;"> <p>Question to the class "What can determine exigent circumstances?"</p> <p>See answers below:</p> </div> <p>A. Officers may conduct an immediate, warrantless search or seizure under emergency conditions, if there is probable cause to believe that the delay in getting a warrant would result in:</p> <ol style="list-style-type: none"> 1.the loss of evidence, 2.escape of the subject, 3.physical harm to police or public <ol style="list-style-type: none"> a. If the offense is serious or an offense of violence b. Is there a reasonable belief the subject was armed and may be in the area that is to be searched. 	

- c. Is there probable cause to believe the subject committed a crime
- d. Is there probable cause to believe the subject was on the premises
- e. Did the police ID themselves and give the subject a chance to surrender prior to entry, if safe & feasible?
- f. Is there an ongoing investigation or decision to arrest the subject fleeing into the premises?

Question to the class

“You respond to a radio assignment for domestic violence. You hear cries for help when you make an initial approach; the door is open.”

Can you enter the home under exigent circumstances? Why or why not?

- g. **Yes, exigent circumstances exist if officers are responding to a call of violence and there is evidence a person’s health, welfare or safety is immediately threatened**

**Search and Seizure
GPO 2.02.02 IV**

Express to student officer, the totality of the circumstance makes exigency. This may include one or multiple factors depending on the incident

XIII. Pat-Down/Frisk during investigatory stops

Question to the class

“Can you perform a Terry pat down based solely on a suspect in a ‘high crime’ area? Why or Why not?”

Answer-no, anchor with the below information

- A. Every investigatory stop does not automatically authorize a pat-down/frisk. Officers may only conduct a pat down/frisk of a detained person if they reasonably suspect that the detained person may be armed and dangerous.**
- B. The purpose and scope of the pat down/frisk is to discover weapons. It is not a generalized search of the entire person.**

Terry v. Ohio, 392 U.S. 1 (1968)

Emphasis armed AND dangerous.

<p>1. During an investigatory stop, officers who develop reasonable articulable suspicion—this means they will have to be able to articulate the objective basis for their suspicion in the data collection software and the required reports—that an individual may be armed and dangerous may perform a “Terry” pat down.</p> <p>a. This includes articulating reasonable suspicion and probable cause (if present) in incident reports.</p> <p>b. It also includes articulating reasonable suspicion and probable cause (if present) in data collection software for every investigatory stop conducted.</p> <p>2. The existence of reasonable suspicion is determined by the totality of the circumstances.</p> <p>3. It is based on all factors known to the officer prior to the stop.</p> <p>4. Some examples from General Police Order 2.01.01 include:</p> <p>a. A person’s appearance. Does this individual fit the specific description of a subject in a particular unlawful incident? Is the individual’s appearance or demeanor consistent with specific criminal activity?</p> <p>a. Like many other aspects of police work a person’s appearance must be based on the totality of circumstance. A person’s appearance on its own cannot satisfy the requirements of RS. But a person’s appearance with specific articulable actions may provide the grounds for a Terry Stop</p> <p>b. A person’s actions, most importantly, what suspicious activity has been observed</p> <p>c. Time of day</p>	<p><i>We will cover data collection more in depth at the end of the course</i></p>
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<p>d. Area of the stop</p> <p>e. Prior knowledge that the detained person has carried a weapon in the past.</p> <p>a. Observations, such as:</p> <p>i. Weighted clothing</p> <p>ii. Retention checks</p> <p>iii. Suspicious bulges</p> <p>b. Consistent with carrying a concealed weapon</p> <p>f. Officers shall not rely solely upon any single factor without other specific and articulable facts.</p> <p>g. Always be mindful of converting a consensual encounter into a seizure. This includes but is not limited to:</p> <p>a. Numbers of officers present</p> <p>b. Show or display of force</p> <p>c. Oscillating lights</p> <p>d. Tone of voice</p> <div data-bbox="243 1371 1109 1654" style="border: 1px solid black; padding: 10px; margin-top: 20px;"> <p>Question to the class: “What could trigger custody?”</p> <p>Answer:</p> <ol style="list-style-type: none"> 1. Placing handcuffs on an individual and/or 2. Moving an individual from one location to another 3. Placing an individual in the back of a zone car (i.e. a reasonable person would feel they are being arrested). </div> <p>XIV. Custodial search and other searches incident to arrest</p> <p>A. Custodial search of arrestee</p>	<p>Ensure officers record Miranda on WCS</p>
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1. Incident to a lawful arrest, officers shall search an arrestee's person and the area within the arrestee's immediate control

B. Search incident to a lawful arrest

1. Officers may, incident to arrest, search both an arrestee's person and the area within the arrestee's immediate control in order to recover weapons, evidence, or a means of escape
 - a. Ex. A search after a lawful arrest i.e., confirmed arrestable warrant or probable cause supporting an arrest
2. The Miranda warning is required by *Miranda v. Arizona*, 384 U.S. 436 (1966), and applies only to sworn officers who will be questioning or interrogating a subject who is in custody
3. Miranda Warnings are not required prior to any incriminating, spontaneous statement, if an individual makes a spontaneous statement, the officer shall provide the Miranda Warning before clarifying the statement or asking any questions related to the statement

C. Vehicle

1. After a person is arrested from a vehicle, officers do not have the authority to search the passenger compartment and locked or unlocked containers incident to arrest, unless one of the following apply:
 - a. Officers have consent to search
 - b. Exigent circumstance
 - c. Officers are performing an inventory search pursuant to impounding the vehicle
 - d. Officers obtain a search warrant

XV. Vehicle Inventory Search

South Dakota v. Opperman, 428 U.S. 364 (1976)

A. When a vehicle is towed with a lawful basis, an inventory search of the vehicle shall be conducted to protect the individual's property, the officer, and others as well as the Division from claims of lost or damaged property resulting from the seizure of the vehicle or items

B. Key points to a vehicle inventory search

1. Barring an extenuating circumstance, after a vehicle inventory search, a tow must follow
2. A vehicle inventory search is not a search for evidence or fruits of a crime
3. A vehicle inventory search is an inventory of the vehicle to protect the officer and agency from civil litigation and protect the property of the owner

Question to the class

"Are you required to record a 360 walk around of the vehicle that is being towed? Why or why not?"

Answer, yes (GPO, WCS 3.2.20), this is not considered a search but reportable under policy

Question to the class

"During a vehicle inventory search, the glove box is locked, however you have the key. Can you open the locked glove box to inventory it?"

Answer yes, (GPO 8.2.01)

4. Yes, Containers found during an inventory search of a vehicle can be opened if accomplished without damage to the container and the search is conducted in accordance with Division policy (GPO 2.02.02, VII, C, 3)

GPO 2.02.02, VII, C, 3

5.Also reference GPO 8.02.01 (Section 1, E, 3)

6.In part, “when conducting inventories, officers shall not open locked containers, trunks glove boxes or consoles unless they have a key to do so, or the vehicle is equipped with an electronic device allowing access to a locked section of the vehicle

**GPO 8.02.01
(Section 1, E, 3)**

Question to the class

“Can containers found during an inventory search of a vehicle be opened? Why or Why not?”

Answer, it depends, explanation below

XVI. Open Fields

- A. Unfenced, open fields surrounding a home are not constitutionally protected from a warrantless search and seizure because no reasonable expectation of privacy extends to these areas**
- B. To have an understanding about open fields, officers need to understand curtilage**
- C. Curtilage refers to the area immediately surrounding the home, which is usually used for domestic purposes (e.g., garage, yard)**
- D. Curtilage carries with it the same protections of the Fourth Amendment**
- E. Any other land is considered an open field

Question to the class

“You are in foot pursuit of a homicide suspect. The suspect runs through an open field. You witness her throw something from her hand during the pursuit. Can you return to the field, without a warrant to search the area?”

Answers below:

F. Yes

G. The “open field” is not a constitutionally protected area.

When distinguishing curtilage from an open field there are specific circumstances to consider GPO 2.02.02 provides some explanation:

1. General Police Order 2.02.02 has provided some explanation
 - a. The proximity of the location to the house
 - b. Whether the same enclosure surrounding the house also encloses the location
 - c. The uses of the location
 - d. The steps that are taken to protect the location from observation by a passerby

**General Police
Order 2.02.02**

XVII. Articulating Reasonable Suspicion

- A. The existence of reasonable suspicion is determined by the totality of circumstances. This may be the only opportunity to highlight the factors that led you to your actions
- B. Do not expect a supervisor, prosecutor or judge to fill in the blanks of the report. Paint a clear and concise picture
- C. **The totality of circumstances is based on all the facts known to the officer including the circumstances that existed prior to the stop of which the officer is aware before making the stop**
 1. What factors are known to you prior to the stop?
Time of day? Prior knowledge of the individual?
We will discuss these and provide examples shortly.
 2. What factors did you discover during the seizure?
Can you articulate further limiting this individual's freedom of movement? Do you have probable cause for arrest?
 3. Unless justified by the reasons articulated for the original stop, officers must have additional articulable justification for further limiting an

<p>individual's freedom during an investigatory (Terry) stop</p> <p>D. Officers shall not rely solely upon any single factor [we will discuss shortly] without other specific and articulable facts indicating that the individual has been, is, or is about to engage in criminal activity, as the basis for an investigatory stop</p> <p>E. When formulating reasonable suspicion, officers may rely on activity they perceive through their own senses, through information obtained from other credible persons (including dispatch), or through a combination of both factors</p> <p>F. When it comes to articulating reasonable suspicion, everything about the interaction matters</p> <p>G. Use all your senses to describe what you did and why it was done</p> <p>H. The following list is included with examples</p> <p>1.The person's appearance</p> <p>a. The specific description of a person</p> <p>b. Does this individual fit the specific description of a subject in a particular unlawful incident</p> <p>2.The person's actions</p> <p>a. Is the person nervous?</p> <p>b. Won't make eye contact</p> <p>c. Why is the person acting this way?</p> <p>I. Is the person afraid of police presence?</p> <p>J. Attempting to flee, (be mindful this should not be used solely to base reasonable suspicion)</p>	<p><i>OPOTA Search and Seizure arrest, search and seizure 2-3</i></p> <p><i>Description from radio or another officer</i></p>
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<p>1. Running after seeing the police is not inherently against the law</p> <p>2. Do not use attempting to flee to solely base your reasonable suspicion</p> <p>K. Evasive behavior</p> <p>L. Indications of a weapon</p> <p>1. You are not conducting the pat down until after establishing the reasonable suspicion for a need to pat down for a weapon</p> <p>2. Prior knowledge of the person</p> <p>a. Have you arrested this person before?</p> <p>b. Are they known for a certain type of criminal behavior?</p> <p>c. “Known and identified” credible information received from a third party about this person</p> <p>3. Area of the stop</p> <p>a. Has the area been hit with a certain type of repeated crime?</p> <p>i. Always be mindful of <u>boilerplate language</u> when articulating reasonable suspicion</p> <p>ii. The presence of an individual in a high crime area without any other specific factors should not be used to formulate reasonable suspicion</p> <p>4. Law enforcement training and experience</p>	<p><i>Some people with limited police action may be frightened by police</i></p> <p><i>Suspect description from known and reliable source</i></p> <p><i>High crime area or known drug location or any such language</i></p>
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<ul style="list-style-type: none"> a. Always be prepared to articulate specific training and experience that you have received (i.e., classes taken, specific arrests or seizures made in a certain area) b. Are you aware of break-ins at certain times of day? <p>5. Law enforcement purpose</p> <ul style="list-style-type: none"> a. Are there special attentions in the area for a specific crime? <p>6. Source of information</p> <ul style="list-style-type: none"> a. From whom did you receive your information? b. Can you corroborate the information? c. Accept information from individuals you feel are credible and reliable 	<p><i>Do you have special attentions in the area? Were you assigned this area due to a certian crime pattern</i></p>
<p>VIII. Probable Cause</p> <p>A. Unless possessing a warrant, officers may not arrest a suspect unless the officer:</p> <ul style="list-style-type: none"> 1. Has probable cause that a subject has committed or is committing a felony offense; 2. Has probable cause that the subject has committed or is committing certain misdemeanor offenses including but not limited to: <ul style="list-style-type: none"> a. the offense of violence b. criminal child enticement c. public indecency d. domestic violence e. violation of a protection order 	

<p>f. menacing by stalking</p> <p>g. aggravated trespass</p> <p>h. theft; or</p> <p>i. Has probable cause from the officer's own observations that the subject has committed or is committing any other misdemeanor offense (other than a minor misdemeanor)</p> <p>B. Formulating probable cause for arrest</p> <p>1.This information may be considered alone or in conjunction with other evidence in determining reasonable grounds to make the arrest:</p> <p>a. Personal observation from officers</p> <p>b. Credible informant tips – always get information from credible sources and information to contact them later if the need arises</p> <p>c. Information from other officers or agencies</p> <p>d. Past criminal record, however, past criminal record standing on its own can never constitute probable cause for an arrest</p> <p>e. Physical evidence found at scene</p> <p>f. Report of victim or eyewitness</p> <p>2. You must articulate aspects related to the arrest when formulating probable cause and reasonable suspicion</p> <p>XIV. Using Procedural Justice while performing searches and seizures</p> <p>A. Factors influencing the acceptance of police decisions:</p> <p>B. The degree to which the police are generally regarded as legitimate</p>	
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<p>C. The degree to which decisions are regarded as favorable & fair</p> <p>D. Residents are more willing to cooperate with the police by engaging in community activities, reporting crimes or identifying suspects when they view the police as legitimate</p> <p>E. Treating people with dignity and respect and giving them a voice in the interaction will de-escalate a situation and allow for transparency in the process</p> <p>F. Provide the individual with as much information as possible to increase the likelihood of voluntary compliance</p> <p>G. If you were pulled over, stopped or searched I am certain that you would want to know who the officer is and why you were stopped</p> <p>H. One illegal search does more harm to police legitimacy – than 100 good ones do</p>	
<p>XV. Small Group Discussion</p> <div data-bbox="227 1270 1144 1543" style="border: 1px solid black; padding: 10px;"> <p>-Small Group Discussion- Break the class into small groups of six to eight officers</p> <p>-Distribute handout #1</p> <p>-The lead instructor will allow about 20 minutes for the class to complete it</p> <p>-The instructor will have the answer key and review the answers with the class</p> </div>	<p><i>Bias Free GPO 1.07.08</i></p>
<p>XIX. Data Collection Forms</p> <p>A. Officers are required to complete a stop data collection form for every traffic stop and investigatory stop</p>	<p><i>Miller et al (2019)</i></p>

<p>B. Information concerning an individual temporarily detained for a stop</p> <p>C. Narrative sections that include a statement of facts establishing reasonable suspicion and/or probable cause in order to justify the stop of an individual and, if applicable, to justify a search</p> <p>D. Traffic stops</p> <ol style="list-style-type: none"> 1. Based on observed traffic violation (PC stops) including all searches 2. Every traffic stop will require a unique CAD number (based on traffic violation) <p>E. Investigatory stops</p> <ol style="list-style-type: none"> 1. Vehicle stops 2. Pedestrian stops 3. Every investigatory stop will require a unique CAD number <p>F. Stops forms require supervisor approval and be shall be completed by the end of the tour of duty</p> <p>G. Supervisors are required to:</p> <ol style="list-style-type: none"> 1. Review and approve 2. Review and Reject (return for correction) <ol style="list-style-type: none"> a. Forms can be rejected for administrative issues like CAD number or if the form requires further articulation 3. Disapprove <ol style="list-style-type: none"> a. The reviewing supervisor shall document that the form was disapproved and provide a reason for the disapproval within the data collection software, including but not limited to the following: 	<p><i>This will be a brief overview of the stops data collection forms</i></p> <p><i>Discuss RS and PC</i></p> <p><i>Emphasis this to specialized unit espically the Traffic Unit</i></p> <p><i>Stops Form GPO as of 3-11-2021</i></p>
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<p>b. Improper Justification for Stop- Investigatory</p> <p>c. Improper Justification for Stop- Traffic Violation</p> <p>d. Improper Justification for Search- Subject</p> <p>e. Improper Justification for Search- Vehicle</p> <p>4. Supervisors shall verbally notify the submitting officer of any rejected forms</p> <p>5. When a rejected form is corrected and resubmitted, the supervisor who initially rejected the form shall review it</p> <p>H. Disapproved forms</p> <p>1. Within seven days of the stop, supervisors shall document and report stops that appear unsupported by RS or PC or that are otherwise in violation of CDP policy and stops that, while adhering with law and policy, indicate a need for corrective action or review of policy, tactics or training</p> <p>2. Supervisors shall place a stop form in a disapproved status when they find that an officer does not have justification for a stop or search</p> <p>3. The reviewing supervisor shall document that the form was disapproved and provide a reason for the disapproval with the data collection software</p> <p>4. Supervisors shall document that a form was disapproved and the reason for the disapproval in an email forwarded through their chain of command</p> <p>5. If a supervisor disapproved a stop form, the supervisor, in consultation with their chain of command, shall address the concern with the involved officer and either</p>	
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- a. Provide non-disciplinary corrective action and document such action in Division tracking software
- b. Refer the matter to IAU for administrative of criminal charges

6.All stop forms must be reviewed by a higher ranking officer that the submitting officer

XX. Breaking For Lunch

- A. Must return on time
- B. After lunch return to classroom to sign back in

XXI. Safety

- A. Identify supervisor who is the safety officer
- B. Safety is the number one priority
- C. There is a first aid kit and AED available at both sites
- D. No firearms are to be handled at anytime

XXII. After lunch

- A. Advise the student officers that they will be attending two separate modules of training
- B. Split the class of student officers into two groups
- C. Advise them that Group #1 will attend the Video module and will then switch with group #2
- D. Advise them that Group #2 will attend the tabletop exercise and will then switch with group #1
- E. Officers will spend 1 hour and 20 minutes in each module

F. Give the class a 10-minute break

G. Send groups to their training area

XIII. **There will be a Test and Debrief at the end of the training day**

Test

Search and Seizure Exam

Name _____

Date _____

1. Consequences for failure to follow clearly established search and seizure guidelines include:
 - A. Criminal liability
 - B. Civil liability
 - C. Loss of public trust
 - D. All of the above

2. An officer's actions of detaining a suspect for investigation, _____, or bringing a suspect under control through the use of force triggers an analysis for reasonableness under the Fourth Amendment of the United States Constitution.
 - A. Initiating a consensual encounter
 - B. Completing daily paperwork
 - C. Making an arrest
 - D. All of the above

3. You and your partner respond to a call for domestic violence. A male opens the front door and asks you to come in. As the male is telling you the reason for the 911 call, you see a bag of white powder you believe is a kilo of cocaine sitting on the table. True or false, you can you seize that cocaine under the plain view doctrine?
 - A. True
 - B. False

4. A male calls the police to investigate a stolen lawnmower. The male states he is certain his neighbor went into his garage and stole his lawnmower. As part of the investigation, you knock on the neighbor's door. The neighbor answers and you request consent to search for the lawnmower. All of the following are considerations when requesting consent:
 - A. Age
 - B. Intelligence

- C. The authority of the person giving consent
- D. Education
- E. All of the above

5. The above homeowner lets you into the house. As you are walking through the house, the homeowner changes his mind and tells you to leave. Can the homeowner lawfully tell you to leave after giving you consent?

- A. Yes
- B. No

6. You and your partner are leaving the house at the request of the homeowner in the above question. Your partner threatens the homeowner by yelling, “if you do not let us search the house, we are going to get a warrant and do it anyway.” This is an example of:

- A. Coercion
- B. Implied consent
- C. Consent
- D. Exigent circumstance

7. You are responding to a radio assignment for domestic violence. When you and your partner approach, you hear a female screaming “stop, you’re killing me.” You enter the front door. This exception to the warrant requirement is known as:

- A. Implied consent
- B. Protective sweep
- C. Exigent circumstance
- D. Search warrant

8. A store owner tells you a female keeps loitering at his store. He would like you to talk to her and tell her not to come back. You see her near the road, you turn your overhead lights on, get out of your car and approach her with your partner and back up. These factors may have converted your consensual encounter into a:

- A. Arrest
- B. A second consensual encounter
- C. A seizure
- D. Custody requiring a warrant or probable cause

9. Officers are required to perform a 360 walk around of a vehicle that you are going to tow.

- A. True
- B. False

10. Curtilage refers to the area:

- A. Immediately surrounding a house
- B. An open field
- C. The tree lawn
- D. The street of the residence

11. When articulating an arrest report, the _____ is based on all of the facts known to the officer and the circumstances that existed prior to the stop.

- A. Known information
- B. Totality of circumstance
- C. Preponderance of evidence
- D. Burden of proof

12. Past criminal record standing on its own can never constitute probable cause for an arrest.

- A. True
- B. False

13. Officers are required to complete a stop data collection form for:

- A. Every traffic stop and investigatory stop
- B. Consensual encounters
- C. Miranda Warning given
- D. For Terry stops only

14. The reviewing supervisor shall document that a data collection form was disapproved and provide a reason for the disapproval within the data collection software, including but not limited to the following except:

- A. Improper Justification for Stop- Investigatory
- B. Improper Justification for Stop- Traffic Violation
- C. Improper Justification for Search- Subject
- D. Improper Justification for Search- Vehicle
- E. All of the above

Test Answer Key

1. D
2. C
3. A
4. E
5. A
6. A
7. C
8. C
9. A
10. A
11. B
12. A
13. A
14. E

Worksheet #1

Name	Assignment
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1. You are on patrol when you observe a group of people outside the local gas station. You were advised in roll call that the owner of this gas station is requesting special attention due to males with guns loitering at all hours of the day. You and your partner park your zone car and approach the group to initiate a consensual encounter. As you approach the group a male turns and runs. Based on the facts presented, was there sufficient evidence to establish reasonable suspicion sufficient to warrant a Terry stop? Why or why not?

2. You have made a warrantless arrest for a person committing a theft offense. You know there are no accomplices in the person's hotel room, but believe there is additional stolen property in the person's hotel room. The person has denied you access to the room but the manager gives you permission to enter.

- A. Can you enter the hotel? Why or why not?
- B. Can you ask for consent under the false assertion that you have a warrant?
- C. What should be your next course of action? Explain your responses.

Worksheet 1A Instructors notes

1. You are on patrol when you observe a group of people outside the local gas station. You were advised in roll call that the owner of this gas station is requesting special attention due to males with guns loitering at all hours of the day. You and your partner park your zone car and approach the group to initiate a consensual encounter. As you approach the group a male turns and runs. Based on the facts presented, was there sufficient evidence to establish reasonable suspicion sufficient to warrant a Terry stop? Why or why not?

NO. There is no reasonable articulable suspicion that this person committed a crime and fleeing, with no other factors present is not reason enough to give chase, and perform a seizure and pat down

2. You have made a warrantless arrest for a person committing a theft offense. You know there are no accomplices in the person's hotel room, but believe there is additional stolen property in the person's hotel room. The person has denied you access to the room but the manager gives you permission to enter.

1. Can you enter the hotel? Why or why not?

NO. The hotel manager cannot give you consent while a lease or rental agreement is in place

2. Can you ask for consent under the false assertion that you have a warrant?

NO. This is an example of coercion

3. What should be your next course of action? Explain your responses

Seek a search warrant