



California State University, Los Angeles
Department of Public Safety

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SUBJECT: **Legal and Constitutional Authority for Arrest, Interrogation, Search and Seizure; Use of Discretion**

I. PURPOSE.

The purpose of this order is to specify legal and constitutional requirements for the arrest process, interview and interrogation, search and seizure, and use of discretion by sworn officers to insure that the rights of all individuals are protected.

II. POLICY.

It shall be the policy of this Department to require employees to comply with all federal, state and local requirements which provide for the protection of individual rights. These requirements are contained in this Order and in the California Peace Officers Legal Source Book which is located in the Investigator's Office.

III. DEFINITIONS. Specified in sections as pertinent to topic.

IV. PROCEDURES.

A. Search and Seizure

1. Plain View.

- a. Objects in plain view of an officer can provide probable cause to obtain a warrant or to seize items of evidentiary value. For plain view to not be a search:
 - 1) The officer must be in a place where he/she has a right to be;
 - 2) The item to be seized was inadvertently viewed and no type of prying quest was made; and
 - 3) The item was immediately recognized as evidence, contraband, or a weapon.
- b. Items in plain view may be seized without a warrant if they are in an area the officer may legally enter.

- c. Items in plain view, but not in an area an officer can legally enter, can serve as probable cause for a search warrant. The scene shall be protected until a search warrant can be obtained.
2. Searches Conducted Pursuant to a Warrant.
 - a. To obtain a search warrant, an officer must submit an affidavit swearing that they have probable cause to believe that property connected to a crime is in the place they seek to search.
 - b. The affidavit should contain sufficient facts to establish probable cause that:
 - 1) A crime was, is being or is about to be committed.
 - 2) That the property named in the search warrant application is connected to the crime.
 - 3) That the property named in the search warrant application is in the place to be searched at the present time.
 - c. The warrant must particularly describe the items sought, the location, vehicle, or person to be searched and must list the statutory grounds for issuing the warrant.
 - d. An officer serving the warrant must announce his presence, identify himself as an officer, state his purpose and demand entry before forcibly entering a private dwelling.
 - e. A copy of the warrant must be provided to the subject of the warrant upon service.
 - f. The warrant must be executed and returned to the court within 10 days from issuance, along with a written inventory of all property seized, unless specified otherwise by the issuing judge. (Penal Code Section 1534)
 3. Warrant Exceptions – There are five legal exceptions to the warrant requirement.
 - a. Search by voluntary consent;
 - b. Search incident to a lawful arrest;
 - c. Search in an emergency where probable cause exists and there is not time to obtain a warrant;
 - d. Investigative stop and frisk; and
 - e. Inventories of vehicles being impounded.
 4. Search by Consent.
 - a. A search that is based on proper consent, that is freely given, not coerced, or given under duress, either expressed or implied.
 - b. The person giving the consent must have the authority to do so. A valid consent to a search can only be given by a person who has a valid right to do so and can only transfer property rights that he/she actually has.
 - c. When two or more people have equal right of access to property/premises, a consent search may be given by any such person and the search and any evidence seized will usually be valid against all occupants.
 - d. Consent must be clear, explicit, and in writing, whenever possible.

- e. When consent is revoked prior to completion of a search, evidence recovered prior to the revocation may be used to establish probable cause for a search warrant or for an arrest and subsequent search incident to arrest.
5. Stop and Frisk Searches (Pat Down Searches).
- a. The United States Supreme Court decided in *Terry v. Ohio* U.S. 1, (1968) that a police officer may briefly detain a person to determine proper identity and conduct an investigation based on the officers reasonable suspicion the person(s) may be involved in criminal activity. The person(s) may be searched using the “stop and frisk” principle where the officer can articulate suspicion that the person(s) are armed. The officer may conduct a pat down of the outer clothing for weapons.
 - b. Pat Down Searches are authorized in the following situations:
 - 1) When the officer has observed suspicious activity on the part of the suspect which gives him/her cause to believe the suspect is armed.
 - 2) Only as a search for weapons.
 - 3) When the officer has received a warning that a suspect might be armed from a reliable informant known to the officer.
6. Field Searches (Search of an Individual Subsequent to a Lawful Arrest).
- a. A Field Search shall be utilized when:
 - 1) The search is based upon a properly issued warrant.
 - 2) The search is connected to a lawful arrest and the prisoner is to be transported.
 - 3) The officer has probable cause to search for weapons.
 - 4) It is necessary to confiscate items of evidence, [i.e., stolen property, narcotics, items related to a crime for which the arrest is being effected].
 - 5) It is believed the prisoner has in his/her possession object(s) which may be utilized as a means of escape [i.e. a handcuff key].
 - b. A Field Search shall be conducted as follows:
 - 1) Complete preliminary pat search or frisk search.
 - 2) Work from top to bottom, checking the prisoner’s hat, hair, and any objects worn in or on the head. Run fingers through the prisoner’s hair, if necessary, to insure safety. Remove sharp objects, which could become weapons.
 - 3) Check the rib cage and back area by patting.
 - 4) Run thumbs along the prisoner’s waistband. Unbuckle the prisoner’s belt and check for small weapons and contraband.
 - 5) The prisoner should next be instructed to raise his/her arms to expose arm pits and pat the area.
 - 6) Check wristwatches, jewelry, and gloves for concealed weapons or contraband.
 - 7) Check shoes and handbags. Do not hesitate to have the prisoner remove boots, spike heels or similar apparel.

- 8) The prisoner shall not be allowed to leave the officer's presence under any circumstances until the search has been completed.

7. Search of a Vehicle.

- a. The courts have distinguished between warrant-less searches of motor vehicles and buildings.
 - 1) The distinction comes from the ease in moving or hiding a motor vehicle or trailer before a police officer can obtain a search warrant.
 - 2) Lesser privacy interests are vested in motor vehicles.
- b. Warrant-less searches of motor vehicles, based on probable cause, that the vehicle contains contraband or evidence of a crime have been upheld by the courts.
 - 1) Any or part of the motor vehicle capable of holding an item may be searched.
 - 2) When the probable cause is based on what is inside a closed container and not to the motor vehicle in general, the container should be seized and a search warrant obtained for the container.

8. Searches at the Scene of a Crime.

- a. Incidental to an arrest the suspect and the areas in the suspect's immediate control may be searched. The purpose of these searches is to protect the officer (by locating weapons) and to prevent the destruction of evidence or contraband.
- b. The United States Supreme Court decided in *Mincey v. Arizona*, 437 U.S. 385 (1978), that in the absence of exigent circumstances or consent, police officers are required by the fourth amendment to obtain a search warrant before a thorough search of any crime scene can be conducted, unless the scene is a public place or another exception to requiring a search warrant exists.
- c. A police officer can without a search warrant secure a crime scene, search the area for victims or perpetrators and seize and evidence, which if not seized, may be lost or destroyed, removed or is within plain view.

9. Exigent Circumstances (Emergency Searches).

- a. An officer may enter an area where there is an expectation of privacy for the purpose of protecting life, health or property. The necessity to enter must involve a substantial and immediate threat to life, health or property or in the fresh pursuit of a criminal suspect.
- b. Once the emergency abates, a warrant is required.
- c. An officer cannot create the exigent circumstances.

10. Inventory Searches.

- a. Inventory searches have been allowed for a threefold purpose:
 - 1) To protect the defendant's property.
 - 2) To safeguard the police from claims of lost property.
 - 3) To protect police from potentially dangerous items located inside vehicles such as: explosives, dangerous chemicals, and/or weapons.
- b. All impounded vehicles will be inventoried.

- c. Property located in the vehicle that does not have an evidentiary value or an obvious high dollar value needing additional security should be left in the vehicle. Items of evidence will be processed in the Department's Evidence System and items of high dollar value will be taken for safekeeping and placed into the Department Property System.

11. Strip Searches and Body Cavity Searches (Penal Code Section 4030).

- a. **No strip search or visual body cavity search may be conducted without prior written authorization of the supervising officer on duty.** The authorization shall include the specific and articulable facts and circumstances upon which the reasonable suspicion determination was made by the supervisor.
- b. When a person is arrested and taken into custody, that person may be subjected to patdown searches, metal detector searches, and thorough clothing searches in order to discover and retrieve concealed weapons and contraband prior to being placed in a booking cell.
- c. No person arrested and held in custody on a misdemeanor or infraction offense, except those involving weapons, controlled substances or violence shall be subjected to a strip search or a visual body cavity search, unless a police officer has determined there is reasonable suspicion to based on specific articulable facts to believe such person is concealing a weapon, or contraband, and a strip search will result in the discovery of the weapon or contraband.
- d. Physical body cavity searches are not permitted except under authority of a search warrant issued by a magistrate specifically authorizing the physical body cavity search.
- e. If authorized, strip searches and visual body cavity searches will be conducted by officers who are the same sex as the arrestee, and should normally be conducted by two officers. These searches will be conducted in an area of privacy so that the search cannot be observed by individuals not involved in the search.
- f. All searches will be documented in the arrest report and will include the time, date and place of the search, the name and sex of the person conducting the search, and a statement of the results of the search, including a list of items removed from the person searched.
- g. Strip searches of juvenile
 - 1) Strip searches of juvenile detainees shall always be conducted by two (2) officers, one to observe and one to conduct the search.
 - 2) The strip search will be performed by officers of the same sex as the juvenile being searched.
 - 3) Officers conducting a strip search of a juvenile must not touch the juvenile.
 - 4) The parent or guardian of the juvenile shall be notified of the search and its results.
 - 5) Juvenile body cavity searches other than the mouth are not permitted except under authority of a search warrant issued by a magistrate specifically authorizing the physical body cavity search and is to be conducted by qualified medical personnel.

12. Receipts for Evidence Collected.

- a. Receipts must be prepared for all evidence seized during a search.
- b. Penal Code Section 1535 states that when an officer takes property, he/she must give a receipt for the property taken (specifying in detail) to the person from whom it was taken, or in whose possession it was found; or in the absence of any person, he must leave it in the place where the property was found.

B. Strip Search Policy for Transgender, Gender-Variant, and Nonbinary Individuals (TGN)

1. Definitions:

- a. Gender: Gender is the social construct used to classify a person as man, woman, both or neither. Gender encompasses all relational aspects of social identity, psychological identity and human behavior. Gender includes a person's gender identity and gender expression.
 - b. Gender Identity. An individual's sense of being either male, female, both or neither. This may be different from what is traditionally associated with the individual's assigned sex at birth.
 - c. Gender Expression. Gender related traits that may or may not be consistent with those traits typically associated with a person's assigned sex at birth. External manifestations of gender, expressed through one's name, pronouns, clothing, haircut, behavior, voice, or body characteristics.
 - d. Transgender (Individual). An umbrella term for persons whose gender identity, gender expression, or behavior does not conform to that typically associated with the sex they were assigned at birth.
 - e. Gender-Variant. A person whose gender identity or gender expression does not conform to socially defined male or female gender norms.
 - f. Nonbinary (Individual). Nonbinary is an umbrella term for people with gender identities that fall somewhere outside of the traditional conceptions of strictly either female or male. People with nonbinary gender identities may or may not use more specific terms to describe their genders, such as agender, genderqueer, gender fluid, two spirit, bigender, pangender, gender nonconforming, or gender variant.
 - g. TGN. An acronym for Transgender, Gender-Variant, and/or Nonbinary person. TGN is utilized for ease of reading this policy.
2. Authorization from a supervisor shall be obtained prior to the strip search. Such authorization shall be documented on the CSULA PD "Voluntary Gender Identity Statement of Preference Form".
 3. Two officers shall be present for strip searches of TGN individuals consistent with other strip searches. TGN individuals shall be asked their preference with regard to gender of the member searching them. For example, "What gender officer would you prefer to search you?"
 4. An officer will take all reasonable measures to minimize the extent to which strip searches intrude on an individual's privacy.
 5. All strip searches shall be conducted in a private location, such that persons not participating in the search cannot observe the person being searched.

6. Prior to the strip search being conducted, a member must explain the process to the custody/detainee.
7. All officers present at a strip search shall be of the same gender identity as the person being searched except in emergency situations consistent with other strip searches.
8. Officers shall not touch the breasts, buttock, genitalia or body cavities of the person being searched.
9. Officers shall accept the persons' declaration of gender identity as truthful before initiating the search. Documentary identification and/or anatomical features are not to be used as indicators of a person's gender identity.
10. A TGN custody/detainee must be offered a preference for the strip search:
 - a. An officer whose gender identity is male Or
 - b. An officer whose gender identity is female

(Note - The lack of a nonbinary option does not suggest that nonbinary members do not exist, rather a reasonable accommodation for such an officer is not currently practicable as nonbinary members have rights to privacy.)

11. Officers are permitted to ask the custody/detainee questions about their gender identity prior to a strip search. The permitted questions are as follows:
 - a. What name would you like to be referred to as?
 - b. What gender officer would you prefer to search you?
12. Where the Officer has an articulable reason to doubt the custody's/detainee's self-identification, the Officer shall defer to the watch commander for final determination.
 - a. When the watch commander overrides the custody/detainees Voluntary Gender Identity Statement of Preference for TGN strip search form, the watch commander shall author a statement for report; articulating the reason(s) for the decision to override the request of the TGN custody/detainee's regarding their strip search preference.
13. Whenever a custody/detainee meets the criteria for a strip search but is non-compliant, the officer will notify the on duty watch commander immediately.
14. Physical body cavity searches other than the mouth are not permitted except under authority of a search warrant issued by a magistrate specifically authorizing the physical body cavity search and is to be conducted by qualified medical personnel.

C. Interviews and Interrogation.

1. Definitions:

- a. Interview. A meeting for obtaining information by questioning a person. The goal of an interview is to develop information, build rapport and detect deception.
- b. Interrogation. A focused formal examination of a person by questioning. The goal of an interrogation is a confession.
- c. Custodial Interrogation. The questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way.

2. Miranda.

- a. The “Miranda” decision requiring police to advise an individual of his rights only applies to a situation in which the person is in custody and is being interrogated.
- b. Since both factors must be present to trigger “Miranda”, a person who is in custody but not being interrogated need not be advised of his rights.
- c. A person who is being interrogated, but is not in custody need not be advised of the warnings prior to being questioned.
- d. All juveniles must be advised of their rights whether or not they are going to be questioned (interrogated). The law, however, does not require that they be advised of their rights immediately upon arrest, as long as the advisement is provided sometime during their custody and/or before any questioning.

3. Access to Counsel.

- a. When a suspect invokes his right to remain silent, or his right to have counsel present during custodial interrogation, the police must immediately cease their questioning.
- b. If the suspect in anyway indicates a desire to have an attorney present during questioning, the police must honor his request and may not at a later time reinstate interrogation of the suspect without an attorney present, whether or not the suspect has consulted with his attorney during the interim.
- c. Penal Code Section 825(b) states that after the arrest, any attorney at law entitled to practice in the courts of record of California may at the request of the prisoner, or any relative of the prisoner, visit the person so arrested.

D. Access to Telephone Calls.

1. Penal Code Section 851.5(a) states that immediately upon being booked, and no later than three hours after arrest, an arrested person has the right to make at least three completed telephone calls.
2. These calls are to be made at no expense to the suspect.
3. At least one of these calls may be made to an attorney of their choice, or if they have no funds, to the public defender.
4. These calls are not to be monitored, eavesdropped upon, or recorded.

E. Designated Rooms for Interviews and Interrogations.

1. Uniformed & non-uniformed personnel are to adhere to a strict standard of safety using any designated room to perform interviews or interrogation related activities.

- a. Weapons shall be secured in building gun lockers (i.e., Temporary Holding Facility) or in the vehicle gun lockers, when an interview or interrogation is conducted of a probable suspect.
 - b. Anytime an interview or interrogation is conducted within the Public Safety building, the Dispatcher is to be notified with the location and an ARMS/CAD entry is to be made for record purposes.
 - c. No suspect, victim, or witness shall be left alone in any room at anytime. The person being interviewed or interrogated shall always be in presence of the officer visually.
 - d. No rooms utilized for interviews or interrogations will be used as a temporary holding point and no person shall be locked inside at anytime.
 - e. A cursory (pat down) search will be conducted of all suspects before they are allowed to enter designated rooms for interviews or interrogations.
 - f. Incidental to a lawful arrest, detainees will be thoroughly searched and all of their property will be removed from them, inventoried and properly secured before an interview or interrogation is conducted. All arrestees will be handcuffed when moved to another room in the building (i.e., to the Temporary Holding Facility).
 - g. People being interviewed or interrogated shall be escorted by an officer anywhere and anytime they are within the Public Safety building.
 - h. Violent or potential suspects shall not be brought into any designated interview or interrogation room.
 - i. Sick or injured suspects and victims should not be placed into interview or interrogation rooms. Proper medical care through summoned paramedics shall be provided when required.
2. The number of personnel allowed in an interview or interrogation room shall be:
 - a. One suspect and no more than two sworn officers at any given time (exception allowed for one additional officer in a training situation) ;
 - b. Witnesses/complainants are to be interviewed separately with no more than two sworn officers present; and
 - c. Juveniles shall be allowed to have a parent, guardian, or immediate family member present.
 3. To allow for a means and method to summons assistance if necessary, officers and investigators shall:
 - a. Have a portable radio with them to utilize the “panic button” capability (the volume can be turned down); and/or
 - b. Have an additional sworn person immediately available directly outside the room.
 4. Equipment and items to be kept in designated interview rooms:
 - a. Due to security concerns officers should be mindful of what items they bring into an interview room (pens, paper, paperclips, and pencils) and ensure that all items are removed at the time that they leave.
 - b. If the room is equipped with permanently installed video and audio equipment and it will be utilized, the equipment will be tested for operational requirements prior to the interview being conducted.
 - c. No unauthorized equipment or items are to be kept or stored in the room.
 5. Access to restrooms, water, or comfort breaks:

- a. Detainees will not be denied access to restrooms, water or other needs; and
- b. Requests for use of the restroom will be accommodated in a timely manner.

F. Use of Discretion by Sworn Officers.

1. Discretion. Discretion is defined as the freedom or authority to make decisions and choices. Authority is defined as the power to enforce laws.
2. Discretion is not limited to what is authorized or what is legal, but includes all that is within the limits of the officer's authority.
3. The quality of police services depends upon the manner in which discretion is exercised. It is the policy of this Department that sworn officers should always seek to exercise that degree of authority, which results in the least intrusive action into the lives of members of the community.
4. When sworn personnel are faced with a situation where discretion can be exercised, they shall carefully evaluate the circumstances and consider the following areas:
 - a. Federal, State, and Local statutes.
 - b. Case law.
 - c. Department policies and procedures.
 - d. Training
 - e. Consultation with a supervisor if further clarification is needed.
5. A sworn officer exercising discretion must carefully evaluate the circumstances. For example:
 - a. In a misdemeanor crime situation the use of discretion is sharply limited. An arrest for a misdemeanor can only be made without a warrant:
 - 1) Whenever the officer has reasonable cause to believe that a person has committed a public offense in her/his presence;
 - 2) When a person is under the age of 18 and the officer has reasonable cause to believe the minor is a person described in Section 600, 601, and 602 of the California Welfare and Institution Code. (See Penal Code Section 836 and Welfare and Institutions Code Section 625).
 - b. In the investigation of a felony, greater degree of discretionary judgement is permitted. An arrest for a felony can be made without a warrant:
 - 1) When a person has committed a felony, although not in the officers presence;
 - 2) Whenever the officer has reasonable cause to believe the person to be arrested has committed a felony, whether or not the felony has in fact been committed.

V. APPENDICES.

1. Department Strip Search and/or Body Cavity Search Authorization
2. Voluntary Gender Identity Statement of Preference Form

DEPARTMENT STRIP SEARCH AND/OR BODY CAVITY SEARCH AUTHORIZATION FORM

_____ STRIP SEARCH

_____ BODY CAVITY SEARCH (Requires a search warrant and is done by qualified medical personnel)

CSULAPD Case #: _____ Charges: _____ Date: _____

Subject to be searched: _____

Reasons for search:

Results of search:

_____ ID# _____ Date/Time: _____

Requesting Officer

_____ ID# _____ Date/Time: _____

Approving Supervisor

_____ ID# _____ Date/Time: _____

Contact Officer

_____ ID# _____ Date/Time: _____

Cover Officer

