

	GENERAL ORDER	Effective: 02-28-2022	# 09-10
	Section: Operations	Replaces or Modifies: GO #09-03; 8-15-2017	
	Title: Arrests and Investigatory Stops		
Issued by: Chief Deputy Mattie Provost			

I. Purpose:

The purpose of this policy is to define the limitations of authority and acceptable conduct and practices of FBCSO personnel when making contact with individuals in the community. Included in this policy are voluntary contacts, investigatory detentions, pat-downs, and arrests.

CORE PRINCIPLES

Sanctity of Human Life. FBCSO employees shall make every effort to preserve human life in all situations.

De-escalation. All FBCSO employees shall use de-escalation techniques and tactics to reduce any threats or gain compliance to lawful commands without the use of force or with the lowest level of force possible.

Procedural justice. Procedural justice is defined as the fairness of processes used by those in positions of authority to reach specific outcomes or decisions. Procedural justice is based upon four central principles, - treating people with dignity and respect, giving citizens “voice” during encounters, being neutral in decision making, and conveying trustworthy motives.

Fair and impartial policy. This policy is established to ensure FBCSO employees perform without bias or prejudice toward any person and that all policing activities are fair and impartial.

II. Policy Statement:

Interactions with community members form the cornerstone of effective law enforcement operations. All FBCSO personnel should follow the provisions of this policy to maximize the usefulness of police-public contacts to include voluntary contacts, investigatory detentions, pat-downs, and arrests. It is the policy of the FBCSO that all community-police contacts made by agency personnel shall be conducted professionally and in accordance with established legal principles.

III. Definitions:

Arrest: Taking a person into custody.

Arrest Warrant: A written order issued by a judge, magistrate, or other proper authority that commands a law enforcement officer to place a person under arrest.

Custody: Placed under formal arrest or when a reasonable person in the individual’s position would have understood the situation to constitute a restraint of freedom of movement of the degree that the law associates with formal arrest.

Exigent Circumstances: Those circumstances that would cause a reasonable person to believe that a particular action is necessary to prevent physical harm to an individual, the destruction of relevant evidence, the escape of a suspect, or some other consequence improperly frustrating legitimate law enforcement efforts.

Investigatory Detention: Temporary detention of a person for investigative purposes based upon reasonable suspicion that the person has committed, is committing, or is about to commit a crime, under circumstances that do not amount to probable cause for arrest.

Pat-Down: A frisk or external feeling by utilizing the hands without manipulation of the outer garments of an individual for weapons.

Probable Cause: When articulable facts and circumstances within an officer's knowledge are sufficient to warrant a prudent person or one of reasonable caution to believe that the suspect has committed, is committing, or is about to commit an offense.

Reasonable Suspicion: A particularized and objective basis, supported by specific and articulable facts, for suspecting a person of criminal activity. Reasonable suspicion must be more than a hunch or feeling but need not meet the test for probable cause sufficient to make an arrest.

Voluntary Contact: An encounter between a law enforcement officer and an individual that may be initiated by the officer for any reason and during which the individual is free to leave at any time.

V. Details and Procedures:

A. Voluntary Contacts Voluntary contacts may be initiated without probable cause, reasonable suspicion, or other indication of criminal activity by the individual when officers adhere to provisions of this policy.

1. Initiation of Voluntary Contacts

- a. Officers may initiate a voluntary contact in any location where they have a legal right to be.
- b. Officers are prohibited from initiating contacts based on individual demographics to include, but not limited to race, ethnic background, national origin, gender, gender identity, sexual orientation, religion, socioeconomic status, age, disability, cultural group, or political status, except when such characteristics are part of a specific subject description.
- c. Officers shall not use contacts on a pretextual basis to intimidate, harass, or coerce individuals.

2. Voluntary Contact Protocol – Voluntary contacts are based on the presumption that the individual is not under any reasonable suspicion of criminal activity.

- a. Persons contacted may not be detained in any manner against their will or frisked unless they provide consent or reasonable suspicion is established during the course of the contact to believe they present a danger to the officer and the officer has reasonable suspicion that they have committed, are committing, or are about to commit a crime.
- b. An officer may not use force or coercion to require an individual to stop or respond to questions or directions absent any other legal reason.
- c. Officers shall strive to ensure that their actions and requests could not be reasonably perceived by the individual as a restraint on their freedom to leave. As such, officers should"
 - i. Introduce themselves and explain the reason for making the contact;
 - ii. Act in a professional, respectful, and restrained manner at all times;
 - iii. Establish rapport;
 - iv. Avoid requests that sound like commands;
 - v. Phrase requests using optional words such as "may," "would you mind," or similar terms and phrases;
 - vi. Ensure the contact remains reasonable and voluntary; and
 - vii. Not create a physical or other barrier to the individual's ability to leave, to include keeping identification, such as a driver's license, or by creating a physically imposing and intimidating presence.
- d. If individuals ask whether they must respond to questions or remain in the officer's presence, they shall be informed that they do not have to answer any questions and are free to leave at any time.
- e. Where individuals refuse or cease to cooperate during a contact, they shall be permitted to leave.

- f. Refusal of the individual to cooperate cannot be used as the basis for turning the “contact” into a “detention.”

B. Investigatory Detentions

1. Justification for Conducting an Investigatory Detention

- a. Officers may stop individuals for the purpose of conducting an investigatory detention only where reasonable suspicion is present.
- b. In justifying the stop, the officer must be able to point to specific articulable facts that, when taken together with rational inferences, reasonably warrant the stop. Such facts include but are not limited to the following:
 - i. The actions of the suspect suggest that they are engaged in a criminal activity.
 - ii. The suspect is carrying a suspicious object.
 - iii. The suspect’s clothing bulges in a manner that suggests they are carrying a weapon.
 - iv. The suspect is located in proximate time and place to an alleged crime.

2. Procedures for Conducting an Investigatory Detention

- a. When approaching the suspect, officers shall clearly identify themselves as law enforcement officers. If not in uniform, officers should announce their identity and display agency identification.
- b. Officers shall, as soon as feasible, explain to the stopped individual(s) why they were stopped.
- c. Before approaching more than one suspect, individual officers should determine whether the circumstances warrant a request for backup assistance and whether the detention can and should be delayed until such assistance arrives.
- d. Officers should confine their questions to those concerning the suspect’s identity and other inquiries necessary to resolve the officer’s suspicions. In no instance shall an officer detain a suspect longer than is reasonably necessary to make these limited inquiries and resolve suspicions. Officers shall be aware that prolonging an investigatory detention unnecessarily may cause a court to view the detention as an unlawful seizure if probable cause does not exist for an arrest.
- e. Officers are not required to give suspects warnings related to custodial interrogation in order to conduct investigatory detentions.
- f. Individuals are not required nor can they be compelled to answer any questions posed during investigatory detentions. Failure to respond to an officer’s inquiries is not in and of itself sufficient grounds to make an arrest.
- g. Officers shall take precautionary measures for their own safety and the safety of others during an investigatory detention, including display of firearms or handcuffing the detainee. Officers shall be aware that unnecessary or prolonged display of firearms and handcuffing during the investigatory detention may cause a court to view the detention as an arrest. Officers shall ensure they have articulable reasons for handcuffing a person under investigatory detention, which may include officer safety or safety of third persons. Risk of flight and risk of violence would support use of handcuffs, and the totality of circumstances are considered when determining if handcuffing is necessary.
- h. If the officer has no basis for making an arrest after conducting an investigatory detention, they shall record the facts of the detention as prescribed by agency policy or procedure.

C. Pat-Downs

1. Justification for Conducting Pat-Downs

- a. Officers shall remain vigilant and strictly adhere to agency training when performing pat-down searches.
- b. A law enforcement officer has the right to perform a pat-down of the outer garments of a suspect for weapons when:
 - i. The suspect has been legitimately stopped with reasonable suspicion, and
 - ii. The officer has specific articulable facts that the suspect possesses weapons on their person and poses a threat to the officer’s or another person’s safety.
- c. Not every investigatory detention poses sufficient justification for conducting a pat-down. The

following are some criteria that may form the basis for establishing articulable justification for performing a pat-down. Officers should note that these factors are not all-inclusive, and the totality of the circumstances should be considered. The existence of more than one of these factors may be required in order to justify a pat-down. Consider the following:

- i. The type of crime suspected—particularly in crimes of violence where the use or threat of deadly weapons is involved.
 - ii. Prior knowledge of the suspect's use of force and/or propensity to carry deadly weapons.
 - iii. Visual indications that suggest that the suspect is carrying a firearm or other deadly weapon.
- d. Pat-downs shall be performed only to protect the safety of officers and others and shall never be used as a pretext to obtain evidence or for other purposes.

2. Procedures for Performing a Pat-Down

- a. When reasonable suspicion justifies a pat-down, the search should be performed with due caution, restraint, and sensitivity.
- b. Whenever possible, pat-downs should be conducted by at least two officers – one who performs the search while the other provides protective cover.
- c. Whenever practical, pat-downs should be performed by officers of the same sex as the suspect.
- d. Pat-downs should generally be conducted with a suspect in a standing position; however, circumstances may exist where an officer can articulate justification of a more secure position in which to conduct the cursory search.
- e. During the pat-down, officers shall feel only the outer clothing of the suspect using their hands but without manipulation of fingers. Officers shall not place their hands in pockets unless they feel an object that could reasonably be a weapon.
- f. If the suspect is carrying an object such as a handbag, suitcase, briefcase, sack, or other item that may conceal a weapon, the officer should not open the item, but instead place it out of the suspect's reach. (e.g. If, during a pat-down, an officer recovers an illegal weapon or contraband, the officer may initiate an arrest based upon probable cause).

D. Arrests. Officers shall conduct arrests only when based upon probable cause or an arrest warrant.

1. Probable Cause

- a. Probable cause for arrest may be established by one of the following:
 - i. Observations of the officer,
 - ii. Information or evidence obtained during an investigatory detention or voluntary contact,
 - iii. An identified individual's specific complaint,
 - iv. Information provided by a law enforcement informant of proven reliability,
 - v. Information provided by other law enforcement sources.
- b. Officers shall not make any arrest based solely on the following:
 - i. Information received from an anonymous source,
 - ii. Mere suspicion not amounting to probable cause.

2. Arrest Warrants

- a. Except when a warrantless arrest is justified by the existence of probable cause, arrests shall be made under an arrest warrant.
- b. Arrest warrants shall be obtained from the legal authority empowered to issue such warrants in this jurisdiction.
- c. Warrants shall be in the form prescribed by the law of this jurisdiction and shall adequately identify the person to be arrested. The warrant shall also provide such other information as is required by law.
- d. Any officer to whom an arrest warrant is delivered shall examine it to ensure that it is in proper form, that all information required by law is provided, and that the warrant appears to be valid. The officer shall also take note of any restrictions placed upon the arrest by the language of the warrant.
- e. Once received, an arrest warrant shall be executed without delay, except as otherwise may be

required by the circumstances of the case.

3. Making the Arrest

- a. No arrest shall be made at a time or in a manner contrary to any express limitations included in a warrant or in a manner or at a time or place prohibited by:
 - i. Agency regulation,
 - ii. Applicable legislation, or
 - iii. Relevant court decisions.
- b. Arrests shall be made at a time and place and in a manner that will maximize the probability of a successful arrest and minimize the danger to officers, innocent bystanders, and suspects.
- c. The arresting officers shall identify themselves, inform the suspect of their arrest, and specify the charges for which the arrest is being made.
- d. Officers not in uniform shall display their badges and credentials when making the arrest to ensure proper identification.
- e. Officers shall follow agency policy and applicable law regarding knock and announce when executing arrest warrants.
- f. No officer shall enter premises owned or occupied by a third person to make an arrest unless the officer has a separate legal basis for entering the premises. Such a basis may be provided by:
 - i. Possession by the officer of a search warrant for those premises,
 - ii. Consent of a person with apparent authority by law to give such consent, or
 - iii. Exigent circumstances.
- g. Officers shall use only the level of force that they reasonably believe is necessary to make an arrest in accordance with this agency's use-of-force policy.
- h. Arrestees shall be advised of their rights pertaining to custodial interrogation before any questioning designed to elicit incriminating statements. Those rights should, whenever reasonably possible, be read verbatim from a standardized agency-approved form.

4. Arrestee Requests

- a. Following the arrest, officers should not permit arrestees to leave the immediate area of the arrest for personal purposes (e.g., to get a coat).
- b. In exceptional cases where it is deemed necessary to grant the arrestee's request to leave the immediate area, they shall first be searched for weapons, contraband, evidence, or implements of escape and then be accompanied and closely monitored by the arresting or other officers.

5. Safety Precautions

- a. Officers shall approach every arrest situation with the knowledge that any arrest, regardless of the offense involved, may present an element of danger. Therefore, officers making arrests shall take all reasonable precautions to ensure their own safety.
- b. Restraint of the Arrestee
 - i. Officers should handcuff arrestees in accordance with training and agency policy.
 - ii. Officers may handcuff the arrestee with their hands in front, or use other appropriate and approved restraining device(s) where the arrestee:
 - Is in an obvious state of pregnancy,
 - Has a physical handicap,
 - Displays behaviors consistent with mental illness or an intellectual/developmental disability,
 - Has injuries that could be aggravated by standard handcuffing procedures, or
 - Where other special circumstances exist.
 - iii. Multiple handcuffs shall be used when needed to prevent injury.
 - iv. Additional approved restraint devices may be used to secure an individual who violently resists arrest or who acts in a manner that indicates they pose a threat to themselves or to the public. Officers should use only those restraints that appear necessary to control the situation and only for the period of time required.
 - v. When restraining individuals on the ground, officers should position the subject in a manner that will assist breathing, such as placement on their side, and avoid pressure to the chest, neck, or head.

- c. Search Incident to Arrest
 - i. Officers shall conduct a thorough search of the person arrested.
 - ii. Any criminal evidence discovered during the search of the arrestee's person shall be seized and preserved in accordance with agency procedures.
 - iii. The search incident to arrest shall include not only the arrestee, but also areas within their reach and control.
 - iv. Officers shall follow agency policy and protocol related to strip and body cavity searches.
 - d. Protective sweeps of the premises or area where the arrest occurs may be performed if there is a reasonable belief that there are third parties that pose a danger to those on the arrest scene.
 - e. Post-Arrest Protection
 - i. Officers are responsible for the safety of the arrestee. In addition, officers shall take the steps reasonably necessary to protect:
 - The officer from the arrestee,
 - Victims and third persons from the arrestee, and
 - The arrestee from self-injury or injury by others.
 - ii. In particular, officers shall not allow victims into close proximity with the arrestee and shall prevent bystanders from approaching the arrestee.
 - iii. Officers shall not allow the arrestee out of their immediate presence for any reason until the arrestee is properly secured and transported.
6. Arrest of Juveniles – All officers shall be aware that the arrest, transportation, and booking of juveniles are subject to specific legal requirements. Officers shall be familiar with and observe these requirements at all times when arresting juveniles.
 7. Arrest of Agency Members – When arresting a member of their own agency, officers shall take all precautions and follow all procedures as provided by agency policy.
 8. Citation in Lieu of Arrest – Officers shall issue citations in lieu of arrest in all situations where citation is directed by law. In situations where citation is discretionary, officers shall consider whether:
 - a. The person is likely to disregard a citation;
 - b. The person, if cited and released, is likely to cause harm to themselves or any other person; and/or
 - c. There are other factors that should be considered and are permitted by law and agency policy.
 9. Release after Arrest
 - a. If it becomes apparent that there is no probable cause to support an arrest, the individual shall be released, and a supervisor shall be notified.
 - b. The officer should document their actions as to the reason(s) for releasing the individual.
 - c. If the person is released, officers shall ensure that they are released at a safe location and not otherwise placed at risk as a result of the incident. If necessary, officers should provide transportation for the released person to a safe location.

E. Reporting

1. The agency should provide an annual report regarding investigatory detentions and arrests to the public, indicating the total number of stops, location of stops, time and day information, outcome of the stops (arrest, non-arrest, etc.), weapon recovery, race, and gender of the stopped individual.
2. The agency should consider an audit and review of voluntary contacts, investigatory detentions, pat-downs, and arrests and ensure they are conducted and performed within agency policy and applicable laws. Contacts, detentions, searches, or arrests that do not conform to policy or law shall result in an administrative investigation.