



Motor Vehicles Stops/Searches	Related Policies: Biased-Based Policing
<i>This policy is for internal use only and does not enlarge an employee’s civil liability in any way. The policy should not be construed as creating a higher duty of care, in an evidentiary sense, with respect to third party civil claims against employees. A violation of this policy, if proven, can only form the basis of a complaint by this department for non-judicial administrative action in accordance with the laws governing employee discipline.</i>	
Applicable Arkansas Statutes: Arkansas Criminal Procedure §14; §12.1; §12.4; §12.6; §14.3	
CALEA Standard: 1.2.4; 1.2.9, Arkansas Code	
Date Implemented:	Review Date:

- I. **Purpose:** The purpose of this policy is to direct officers in their contacts with motor vehicles.
- II. **Policy:** The policy of this department is to protect and serve the constitutional rights of all citizens when conducting vehicle stops and searches while balancing the needs of law enforcement in solving crime for the protection of the community.
- III. **Definitions**
 - A. **Motor Vehicle:** Any motorized vehicle that is capable of movement to include motor homes.
 - B. **Probable Cause:** (search): Facts and circumstances based upon observations or information that would lead a reasonable law enforcement officer to believe that evidence of crime exists and that the evidence exists at the place to be searched.
 - C. **Probable Cause:** (arrest): Facts and circumstances based upon observations or information that would lead a reasonable law enforcement officer to believe that a crime has been or is being committed and the person to be arrested is the one who is or has committed the crime.
 - D. **Reasonable Suspicion** (temporarily detain): Facts and circumstances based upon observations or information, short of probable cause but based upon articulated facts that would lead a reasonable law enforcement officer to believe that criminal activity is afoot.
 - E. **Reasonable Suspicion** (frisk): Facts and circumstances based upon observations or information, short of probable cause but based upon articulated facts that would lead a reasonable law enforcement officer to believe that a person who is lawfully stopped is in possession of a weapon.
 - F. **Frisk** (weapon): A limited type of search, the limit being to those areas capable of holding a weapon and located within the subject’s immediate area of control.
 - G. **Motor Vehicle Stop:** Motor vehicle stop means any stop of a motor vehicle, except for a stop of a motor truck, truck-tractor, semi-trailer, trailer, or towed vehicle at a state weighing station.

IV. Procedures

- A. Vehicle Stops-** Vehicles may be lawfully stopped under the following circumstances:
- i. Reasonable Suspicion Based Stop- where an officer has articulated facts that support a belief that criminal activity is occurring and that a vehicle is involved the officer may stop the vehicle to investigate further. The stop may continue as long as the officer diligently investigates to confirm or dispel his or her suspicion that criminal activity is occurring and the occupant(s) of the vehicle are involved.
 - ii. Probable Cause Based Stop-Traffic Violation- where an officer has probable cause to believe that a violation of the motor vehicle code has occurred may stop the vehicle and detain the vehicle for a reasonable amount of time while the citation is completed.
 - iii. Probable Cause Based Stop-Arrest/Search- where an officer has probable cause to believe that a person in a vehicle has committed a crime, or has probable cause to believe that a vehicle contains evidence of a crime, or contraband, the officer may stop the vehicle to arrest the occupant (in the arrest situation); the officer may stop the motor vehicle to search the vehicle in the search scenario.
 - iv. Consensual Contact- An officer may approach any stopped vehicle (a vehicle that is stopped by the operator's own volition prior to police contact) and attempt to speak to person(s) in the vehicle. The officer has no power to force compliance with his or her attempt to contact in the consent situation.
- B. Ordering Persons from a Vehicle:** An officer may order any occupant of a lawfully stopped vehicle to exit the vehicle during a lawful stop.
- C. Frisk of a Vehicle:** An officer who has reasonable suspicion to believe that a lawfully stopped vehicle contains a weapon may search the vehicle subject to the following limitations:
- i. The search is limited to subject's immediate area of control, which would be the passenger compartment of the vehicle.
 - ii. The search is limited to those areas in the passenger compartment capable of holding a weapon.
- D. Search Incident to Arrest (Vehicle):** Following the lawful arrest of a subject from a vehicle or who had exited the vehicle just prior to arrest, officers may search the vehicle incident to arrest subject to the following limitations:
- i. The arrest must be lawful and must be a full-custodial arrest. **The arrest must not be pre-textual in nature, in other words, the decision to arrest must not be based upon a desire to search the vehicle incident to arrest in a case where normally the officer should not have made a custodial arrest.**
 - ii. The search must take place at the time of the arrest.
 - iii. A search incident to arrest may not take place once the arrestee is secured in handcuffs and secured in a law enforcement vehicle unless the officer has reasonable grounds to believe that the vehicle contains evidence of the particular crime for which the subject was arrested.

- iv. The search incident to arrest is limited to the arrestee's immediate area of control (passenger compartment only) but is a thorough search. If the vehicle's trunk is in the immediate area of control of the arrestee and accessible from the passenger compartment, it may be searched incident to arrest.
 - v. Unlocked containers within the vehicle may be searched regardless of ownership.
 - vi. Other occupants may not be frisked or searched simply because another person in the vehicle has been arrested.
- E. Consent Search of Vehicle:** An officer may ask the person in control of any lawfully stopped vehicle or a vehicle that is not moving at the time of a consensual contact for consent to search the vehicle. Consent searches are subject to the following limitations:
- i. The Consent must be voluntary.
 - ii. Written consent is not required under federal law; however, written authorization or a mobile video recording that documents consent will assist in proving the voluntary nature of the consent.
 - iii. The scope of the search is within the control of the person granting consent, thus, the consenting party can direct the area that an officer is allowed to search as well as how long the search may last.
 - iv. Under the rules of consent, there is no requirement that officers inform a person of their right to refuse the officer's request, however a person who is told of their ability to refuse will be less likely to make out a claim that their consent was not voluntary.
 - v. Officers may not prolong a stop beyond its original justification in order to obtain consent.
- F. Probable Cause Searches of Vehicles (Carroll Doctrine/Motor Vehicle Exception to the Warrant Requirement/Mobile Conveyance Exception)** An officer may, without a warrant, search a motor vehicle when the officer can articulate probable cause to believe that the vehicle contains evidence of a crime or contraband subject to the following limitations:
- i. In cases where the vehicle was stopped or parked prior to contact by the police, the area where the vehicle is parked is not private property such that officers would have to obtain a warrant to gain access to the property itself.
 - ii. The vehicle is capable of movement. This does not mean that the vehicle is occupied; it simply means that the vehicle could be started and driven off with the turn of a key.
 - iii. Officers may search the entire vehicle where there is probable cause to believe there is evidence or contraband in the vehicle.
 - iv. Officers may only search those areas within the vehicle capable of containing the item being sought. For example, an officer looking for stolen stereo equipment would exceed the scope of a probable cause search if he or she were to search the ashtray for the stolen equipment. **In addition, where the**

officer has probable cause to believe a particular container within the vehicle conceals contraband the search would be limited in scope to that container.

- v. Under Arkansas Law Probable Cause Searches of Motor Vehicles may only be conducted:
 - a. on a public way or waters or other area open to the public;
 - b. in a private area unlawfully entered by the vehicle; or
 - c. in a private area lawfully entered by the vehicle, provided that exigent circumstances require immediate detention, search, and seizure to prevent destruction or removal of the things subject to seizure.

G. Drug Sniffing Canine: Where officers have a lawfully stopped vehicle, they may utilize a drug-detection canine to sniff the exterior of the vehicle as long as the sniff occurs within the duration from a time standpoint of the purpose that justified the stop to begin with. For example, if the vehicle were stopped for speeding, the canine would have to arrive and conduct the sniff in the time it would take to write the citation.

- i. If the stop must be prolonged beyond its justification to wait for the canine to arrive, the vehicle must be released and the canine cancelled.
- ii. It is recognized that an officer may develop reasonable suspicion of possession of narcotics during the initial stop which would then justify prolonging the stop for the canine's arrival.
- iii. If the canine conducts a sniff in accordance with this policy and alerts on the vehicle, the officer has probable cause and may conduct a probable cause search of the vehicle.
- iv. Putting a canine inside a vehicle is a search for 4th Amendment purposes and must not be done unless the officer can support the search by probable cause to believe the vehicle contains contraband.

H. Inventory Searches: An inventory search is not a search for evidence or contraband and is not a search with an investigative purpose. The primary objective of these searches is to protect the property of persons whose vehicles are towed at the direction of law enforcement. These searches also have the objective of protecting law enforcement from false claims with respect to vehicles that are towed at the direction of law enforcement. Inventory searches are subject to the following limitations.

- i. All vehicles towed at the direction of an officer of this department, irrespective of the reason for the tow, shall be inventoried in accordance with this policy.
- ii. Officers will note in their report any items of value that are within the vehicle.
- iii. If an item of extreme value is located within the vehicle and is removable, the officer shall take the item for safekeeping and turn the item over to the owner or, when that is not possible, take the item to the department to be held for safekeeping in accordance with the provisions of the property and evidence policy.
- iv. It is permissible to impound and inventory the contents of a vehicle when:

- a. The driver is arrested; or

- b. When there is other good cause, such as when the driver is physically unable to drive the vehicle and leaving it by the side of the road would create a hazard.
- c. Officers are not authorized to conduct general searches of disabled vehicles for evidence of ownership.

I. Community Caretaking Search: Where officers have reason to suspect that a vehicle contains a dangerous item, which, if left unattended will endanger public safety, the officer may search the vehicle to remove the dangerous item for safekeeping. An officer removing such an item should protect the owner's property interest by ensuring that the item is stored in accordance with department procedures relating to property and evidence.

- i. **Emergency Searches:** An officer who has reasonable cause to believe that premises or a vehicle contain:
 - a. individuals in imminent danger of death or serious bodily harm; or
 - b. things imminently likely to burn, explode, or otherwise cause death, serious bodily harm, or substantial destruction of property; or
 - c. things subject to seizure which will cause or be used to cause death or serious bodily harm if their seizure is delayed;

may, without a search warrant, enter and search such premises and vehicles, and the persons therein, to the extent reasonably necessary for the prevention of such death, bodily harm, or destruction.

J. Warrantless Search by Law Enforcement Officer for a Supervised Probationer or Parolee.

- i. A person who is placed on supervised probation, or is released on parole, is required to agree to a waiver as a condition of his or her supervised probation or parole that allows any certified law enforcement officer to conduct a warrantless search of his or her person, place of residence, or motor vehicle at any time, day or night, whenever requested by the certified law enforcement officer. A warrantless search that is based on a waiver shall be conducted in a reasonable manner **(16-93-106)**.
- ii. Though Arkansas Law does not require an articulable suspicion that the person is committing or has committed a criminal offense, this department requires that an officer have some articulable law enforcement concern, however slight, prior to conducting such searches without the direct assistance of a parole or probation officer, or that the parolee/probationer be a party to an otherwise lawful stop based on reasonable suspicion or probable cause.
- iii. Examples of a law enforcement concern include but are not limited to: Anonymous tips/reports that would otherwise not be sufficient to conduct a search; parolee/probationer found in known crime areas, or otherwise under suspicious circumstances less than reasonable suspicion for a terry stop; parolee/probationer is a party to a lawful traffic stop or other detention whereby a search would otherwise be unlawful.
- iv. Officers are prohibited from using this statute to harass.

- v. Prior to a 4th amendment seizure (detention or stop) and or search of a parolee/probationer based on the sole fact that the person is merely a parolee/probationer, a member of this department shall verify the status of the person believed to be on supervised probation or parole and that a waiver exists prior to conducting a seizure and or search by one of the following methods:
 - a. As part of a consensual contact, a person admits to being on probation or parole, admits that a waiver exists, and consents to search. Under this scenario, no seizure has occurred and the Officer is conducting a search under the consent to search doctrine without having verified that a waiver exists via logical means.
 - b. Officer determines person is on probation/ parole via ACIC and confirms that a waiver is on file.
 - c. Officer determines person is on probation /parole and that a waiver exists through personal contact with the Departments of Correction or Community Correction or by contacting a Community Correction Officer prior to any warrantless search being conducted.
- vi. The officer conducting the search must make a request to search the supervised probationer or parolee prior to search; however, obtaining consent to search is not required if it is determined through appropriate means that a waiver exists as a condition of release.
- vii. Authority granted under this statute does not preclude other restrictions that may be applicable under law including 3rd party rights, co-occupants, etc.
- viii. In the event a co-occupant or other lawful third party prevents the search of a residence where a parolee or probationer resides based on applicable law, Officer will advise the third party that the parolee/probationer may be in violation of his/her parole based on their lawful objection and the Officer will report the incident to Parole/ Probation for their consideration of enforcement.
- ix. Officers will document all parole/probation searches or attempts to search in a manner approved by their department. The report should document the date, time, location, parolee/probationer searched, scope of the search, the law enforcement concern that led to the search or an otherwise lawful stop, and the result of any such search.
- x. In addition to typical enforcement that may occur, the discovery of any criminal violation will be immediately reported to the appropriate Parole/Probation Officer for further administrative consideration.