



Stop, Arrest, and Search of Persons	Related Policies:
<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 §3.1; §4.1; §4.2; §4.3; §4.4; §12-62-40; §16-43-102; §16-81-102; Constitution Art 3 §4; Art. 11§3; Arkansas Code 16-93-107.	
CALEA Standard: 1.2.4; 1.2.5; 1.2.8; 1.1.4	
Date Implemented:	Review Date:

- I. **Purpose:** The purpose of this policy is to direct the members of this department on the lawful limits of authority with respect to contacts with persons.
- II. **Policy:** The policy of this department is to protect and serve the constitutional rights of all citizens when stopping, arresting or searching individuals while balancing the needs of law enforcement in solving crime for the protection of the community.
- III. **Definitions**
 - A. **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.
 - B. **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.
 - C. **Reasonable Grounds:** As used in this policy reasonable grounds shall have the same meaning as probable cause.
 - 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 where an officer may only conduct a search for weapons. With respect to a person, such a search is limited to a pat down of the subject's outer-clothing.

- G. Strip search:** The removal or rearrangement of clothing that results in the exposure or observation of a portion of the genitals, the buttocks, or the breasts of a female.
- H. Consensual Contact:** An interaction between a member of law enforcement and the public that is voluntary in nature. The law enforcement member has shown no authority that would cause a reasonable person to believe that they had no choice but to respond or comply with the officer's efforts. Under this type of contact, an officer has no power to detain an individual who chooses not to participate in the contact.
- I. Arrest:** An arrest is the taking of a person into custody so that he may be held to answer for the alleged commission of a public offense.
- J. Fresh pursuit** shall include fresh pursuit as defined by the common law and the pursuit of a person who has committed a felony or who is reasonably suspected of having committed a felony in this state. It shall also include the pursuit of a person suspected of having committed a supposed felony in this state, though no felony has actually been committed, if there is reasonable ground for so believing. Fresh pursuit as used here shall not necessarily imply instant pursuit, but pursuit without unreasonable delay.

IV. Procedures

- A. Consensual Contact –** An officer may approach anyone and attempt a consensual contact.
 - i.** Officers are not required to have reasonable suspicion for this type of contact.
 - ii.** Officers may not take any steps through words or conduct to stop the person's movement under this type of stop.
 - iii.** A person cannot be compelled in any way to participate in the stop.
- B. Reasonable Suspicion Based Stops/Terry Stops –** An officer who is aware of facts and circumstances that would lead a reasonable police officer to conclude that criminal activity is afoot, may stop a person, using reasonable force short of deadly force, and detain the person for a reasonable amount of time to investigate further.
 - i.** A law enforcement officer lawfully present in any place may, in the performance of his duties, stop and detain any person who he reasonably suspects is committing, has committed, or is about to commit (1) a felony, or (2) a misdemeanor involving danger of forcible injury to persons, or of appropriation of or damage to property, if such action is reasonably necessary either to obtain or verify the identification of the person or to determine the lawfulness of his conduct. An officer acting under this rule may require the person to remain in or near such place in the officer's presence for a period of not more than fifteen (15) minutes or for such time as is reasonable under the circumstances. At the end of such period, the person detained shall be released without further restraint, or arrested and charged with an offense.
- C. Reasonable Suspicion Based Frisk –** An officer may conduct a limited frisk/pat-down of a person's outer clothing when the officer has reasonable suspicion to believe that a person who has been lawfully stopped is in possession of a weapon that poses a danger to the officer or others present.

- i. Items that may support reasonable suspicion:
 - a. The type of crime for which the stop is based is one that would lead a reasonable officer to conclude generally involves a weapon.
 - b. The officer observes a bulge in the subject's clothing that has the appearance of a weapon.
 - c. The officer has information (anonymous tip merely providing description and location is not enough) indicating that a person is armed.
 - d. The officer is aware of the subject's history of carrying weapons.
 - e. The officer observes the subject reach as if reaching for, or reaching to hide a weapon (furtive movements).
 - ii. Plain feel: an officer may retrieve items which the officer feels during the frisk under the following circumstances:
 - a. The officer is conducting a valid frisk; and
 - b. The officer feels an item which the officer knows is not a weapon;
 - c. The officer immediately recognizes the item as evidence or contraband without making a further intrusion. Squeezing or manipulating the item during the frisk would constitute a further intrusion under this section and would therefore invalidate the seizure.
 - iii. The frisk is limited to a pat down of the outer-clothing and does not include reaching into pockets etc. unless the officer feels an item during the frisk that the officer reasonably believes is a weapon.
- D.** Arrest – An officer may arrest an individual if the officer has probable cause to believe that a crime has been committed and probable cause to believe that the person to be arrested is the person who committed that crime. Once probable cause is established, an officer may take custody of the subject and involuntarily transport the subject.

NOTE: If the person to be arrested is in a dwelling-refer to Home Search Policy; if the person to be arrested is in a vehicle-refer to vehicle search policy.

E. Under Arkansas Law:

- i. Procedure on Arrest: Upon making an arrest, a law enforcement officer shall
 - a. identify himself as such unless his identity is otherwise apparent;
 - b. inform the arrested person that he is under arrest; and
 - c. as promptly as is reasonable under the circumstances, inform the arrested person of the cause of the arrest.
- ii. Authority to arrest without warrant. A law enforcement officer may arrest a person without a warrant if:
 - a. the officer has reasonable cause to believe that such person has committed a felony;
 - b. the officer has reasonable cause to believe that such person has committed a traffic offense involving:

- c. death or physical injury to a person; or
 - d. damage to property; or
 - e. driving a vehicle while under the influence of any intoxicating liquor or drug;
 - f. the officer has reasonable cause to believe that such person has committed any violation of law in the officer's presence;
 - g. the officer has reasonable cause to believe that such person has committed acts which constitute a crime under the laws of this state and which constitute domestic abuse as defined by law against a family or household member and which occurred within four (4) hours preceding the arrest if no physical injury was involved or 12 (twelve) hours preceding the arrest if physical injury, as defined in Ark. Code Ann. § 5-1-102, was involved;
 - h. The officer is otherwise authorized by law.
- iii. Arrest with Warrant:
- a. Any law enforcement officer may arrest a person pursuant to a warrant in any county in the state.
 - b. A law enforcement officer need not have a warrant in his possession at the time of an arrest, but upon request, he shall show the warrant to the accused as soon as possible. If the officer does not have the warrant in his possession at the time of the arrest, he shall inform the accused of the fact that the warrant has been issued.
- iv. Authority to Arrest Outside of this Department's Jurisdiction: It is the policy of this department to assist local, state, and federal law enforcement agencies in their legitimate law enforcement operations when requested. To provide such assistance, members of this department may travel outside this jurisdiction when requested by another law enforcement agency; under the terms of a mutual aid agreement; or when acting pursuant to applicable law.
- a. An officer of this department may make an arrest outside of this department's jurisdiction within the State of Arkansas under the following circumstances:
 - 1. Fresh Pursuit; (16-81-301)
 - 2. Warrant for Arrest; (16-81-104; ARCP 4.2)
 - 3. When requested by the local law enforcement agency for assistance and the officer requested is from an agency that has a written policy covering arrests outside of his jurisdiction; (16-81-106 (c) (3)(4))
 - 4. When a county sheriff requests or grants permission for an officer from a contiguous county to come into the sheriff's county for purposes of investigating and making arrests for violation of controlled substances laws. (12-12-102)
- F. Search Incident to Arrest of a Person:
- i. When an officer arrests a person on the street, the officer may conduct a thorough search of the subject's person (not strip search) and the subject's immediate area of control.
 - ii. When possible and practicable, cross-gender pat-downs and searches will be conducted by an authorized person of the same sex as the arrestee.

- iii. The purpose of this search is the following:
 - a. Protecting the officer from attack;
 - b. Preventing the person from escaping;
 - c. Discovering or seizing the fruits of the crime for which the person has been arrested; or
 - d. Discovering or seizing any instruments, articles, or things that are being used, or which may have been used, in the commission of the crime for which the person has been arrested.
 - iv. This search may include the subject's pockets as well as any items they are in possession of at the time of the arrest.
 - v. Cell phone search incident to arrest: Officers are required to obtain either consent from the arrestee, a court authorized search warrant, or articulate the existence of exigent circumstances before a cellular phone or hand-held device is opened and searched.
 - vi. (For search incident to arrest in home-see home search policy-for incident to arrest search in vehicle see motor vehicle contacts policy)
- G. Privilege from Arrest:**
- i. **Diplomatic and Consular Immunity**
 - a. **Background.** Diplomatic immunity is a principle of international law by which certain foreign government officials are not subject to the jurisdiction of local courts and other authorities for both their official and, to a large extent, their personal activities. It should be emphasized, however, that even at its highest level, diplomatic immunity does not exempt diplomatic officers from the obligation of conforming to national and local laws and regulations.
 - b. Categories of persons entitled to diplomatic immunity are as follows:
 - 1. **Diplomatic Agent:** Enjoys the highest degree of privileges and immunity. Diplomatic Agents may not be handcuffed (except in extraordinary circumstances), arrested, or detained for any criminal offense. Generally, they are immune from any civil suits, but are not immune from receiving a citation/summons. Family members of these persons enjoy the identical privileges and immunity.
 - 2. **Diplomatic Administrative and Technical Staff:** Enjoy privileges and immunity similar to Diplomatic Agents. Diplomatic Administrative and Technical Staff may not be handcuffed, arrested, or detained for any criminal offense. They enjoy immunity from civil suits arising in connection with the performance of their official duties. Officers may issue a citation for a motor vehicle violation. Family members enjoy identical privileges or immunity.
 - 3. **Diplomatic Service Staff:** They are accorded few privileges and immunities. Diplomatic Service Staff may be arrested or detained for criminal offenses. They enjoy immunity from civil suits arising in connection with the performance of their official duties. Officers may

issue a citation for traffic violations. Family members enjoy no privileges or immunities.

4. **Consular Officers:** Enjoy privileges and immunity from criminal and civil matters arising from their performance of official duties. Consular Officers may be arrested or detained, pursuant to an arrest warrant, for felony offenses. They may be prosecuted for misdemeanors, but may not be arrested or detained prior to trial or other disposition of charges. Officers may issue a citation for traffic violations. Generally, family members enjoy no privileges or immunity.
5. **Consular Employees:** Enjoy privileges and immunity from criminal and civil matters arising from their performance of official duties. Consular Employees may be arrested or detained for criminal offenses. Officers may issue a citation for traffic offenses. Family members enjoy no privileges or immunity.
6. **Honorary Consuls:** Enjoy privileges and immunity from criminal and civil matters arising from their performance of official duties. Honorary Consuls may be arrested or detained for criminal offenses. Officers may issue a citation for a traffic offense. Family members enjoy no privileges and immunity.

ii. Procedure for Notification When a Foreign National is Arrested

- a. Determine the foreign national's country. In the absence of other information, assume this is the country on whose passport or other travel documents the foreign national travels.
- b. All foreign nationals must be told of their right to Consular notification.
- c. If the foreign national's country is not on the mandatory notification list:
 1. Offer, without delay, to notify the foreign national's consular officials of the arrest/detention.
 2. If the foreign national asks that consular notification be given, notify the nearest consular officials of the foreign national's country without delay.
- d. If the foreign national's country is on the list of mandatory notification countries:
 1. Notify that country's nearest consular officials, without delay, of the arrest/detention. Tell the foreign national that you are making this notification
- e. Keep a written record of the provision of notification and actions taken.

iii. Arkansas Exemptions from Arrest:

- a. The organized militia shall be privileged from arrest during their attendance at muster and attendance at drills and in going to and returning from attendance at muster and drills in all cases except treason, felony, and breach of the peace.
- b. The volunteer and militia forces shall in all cases (except treason, felony, and breach of the peace) be privileged from arrest during their attendance

at muster and the election of officers, and in going to and returning from the same.

- c. All witnesses shall be privileged from arrest in all cases except treason, felony, or breach of the peace during their attendance on any court where their attendance is required by subpoena, and going to and returning from the place where they may be required to appear to testify, allowing one (1) day for every twenty-five (25) miles from their residence.
 - d. The members of the Senate and House of Representatives and the clerks, sergeants-at-arms, and doorkeepers of each branch of the General Assembly shall be privileged from arrest during the session of the General Assembly and for fifteen (15) days before the commencement and after the termination of each session.
 - e. All persons qualified to vote for representatives in the General Assembly shall be privileged from arrest during their attendance at any election and while on their way going to and returning from the election.
 - f. No person shall be arrested while doing militia duty under the order of his commanding officer or while going to or returning from the place of duty or parade.
 - g. No person shall be arrested in the Senate chamber or House of Representatives during their sitting or in any court of justice during the sitting of the court.
 - h. Nothing contained in this section shall be so construed as to extend to cases of treason, felony, or breach of the peace or to privilege any person named from being served at any time or place specified in this section with a summons or notice to appear.
 - i. Electors shall, in all cases (except treason, felony, and breach of the peace,) be privileged from arrest during their attendance at elections, and going to and from the same.
- H. Strip Search: In order to conduct a strip search of an individual two threshold issues must be met:
- i. The person must first be arrested based upon probable cause to believe that person has or is committing a crime.
 - ii. Field: The officer must have probable cause to believe that the arrestee is concealing evidence, contraband, or weapons on their person. These searches shall be conducted at the police station or jail, unless exigent circumstances exist that make the search necessary to protect the officer or others from serious bodily harm or death. In such a case, the officer shall obtain supervisory authorization before making this search, unless no supervisor is available. In all cases, the officer must seek a private area to conduct the search that is out of view of the public and other persons.
- I. Booking: Strip searches during the booking process may only be conducted when officers can articulate reasonable suspicion to believe that the subject is concealing weapons or contraband.

- i. All strip searches conducted shall be performed by persons of the same sex as the arrested person, in a professional manner, and on premises where the search cannot be observed by persons not physically conducting the search.
- ii. Officers performing strip searches must obtain authorization from a supervisor to approve the strip search.
- iii. In all cases where a strip search has been conducted, the officer will document the following:
 - a. The name of the person searched;
 - b. The person who conducted the search;
 - c. The supervisor who authorized the search;
 - d. The offense the suspect was arrested for;
 - e. Facts and circumstances that led the officer to believe that the suspect was hiding weapons or contraband on his or her person;
 - f. The manner in which the search was conducted;
 - g. The persons who were present during the search;
 - h. The location where the search occurred;
 - i. The items that were recovered as a result of the search.

J. Body Cavity Searches: No search of any body cavity other than the mouth shall be conducted without a duly executed search warrant. Any warrant authorizing a body cavity search shall specify that:

- i. The search must be performed under sanitary conditions;
- ii. The search must be conducted by or under the supervision of a physician or registered nurse licensed in this state.

K. 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:
 - 1. 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.
 - 2. Officer determines person is on probation/ parole via ACIC and confirms that a waiver is on file.
 - 3. 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 third 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 agency. 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.