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| CHAPTER 1: LAW ENFORCEMENT ROLE AND AUTHORITY | POLICY # 1.8 SEARCH OF PERSONS |
| <p><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></p> | |
| Date Implemented: 07/15/2021 | Review Date: |

- I. **Purpose:** The purpose of this policy is to direct the members of this agency 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 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.
 - D. **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.
 - E. **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.
 - F. **Strip search:** The removal or rearrangement of clothing that results in the exposure or observation of a portion of a person's body where that person has a reasonable expectation of privacy.

- G. 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.

IV. Procedures:

- A. Consensual Contact** - An officer may approach anyone and attempt a consensual contact.
- a.** Officers are not required to have reasonable suspicion for this type of contact.
 - b.** Officers may not take any steps through words or conduct to stop the person's movement under this type of stop.
 - c.** 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.
- a.** Officers may detain the person for a reasonable amount of time at the location of the stop while a diligent investigation is conducted such that the officer has an opportunity to confirm or dispel their suspicion.
 - b.** Anonymous tips that merely describe a person's location and physical/clothing description without providing a prediction of the subject's future actions that can be corroborated by the police prior to contact are insufficient to justify a stop or frisk.
 - c.** The duration of the stop should not exceed the amount of time that it would normally take to investigate the conduct that the officer suspected at the time the stop was made.
 - d.** Officers may not frisk every person who is stopped in accord with this policy. An officer may only frisk those individuals for whom the officer has reasonable suspicion to believe is armed with a weapon.
- 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.
- a.** Items that may support reasonable suspicion:
 - 1)** The type of crime for which the stop is based is one that would lead a reasonable officer to conclude generally involves a weapon.
 - 2)** The officer observes a bulge in the subject's clothing that has the appearance of a weapon.
 - 3)** The officer has information (anonymous tip merely providing description and location is not enough) indicating that a person is armed.
 - 4)** The officer is aware of the subject's history of carrying weapons.
 - 5)** The officer observes the subject reach as if reaching for or reaching to hide a weapon (furtive movements).

- (c) Suspect History
 - (d) Suspect Flight
 - (e) Type of Area i.e., high crime area
- 7) Juvenile Arrest Procedures: Juveniles may be taken into custody for non-criminal offenses under the following conditions:
- (a) Pursuant to an order from a court for failure to appear before the court for a previous status offense; or
 - (b) If there are reasonable grounds to believe that the child has been a habitual runaway from his parent or person exercising custodial control or supervision of the child

E. Search Incident to Arrest of a Person:

- a. When an officer arrests a person on the street, the officer may conduct a thorough search of the subject's person (not strip search).
- b. Cross-Gender Searches
 - 1) If the arresting officer and prisoner are of the opposite sex, this search should be observed, if possible, by a witness or in front of the vehicle video camera.
 - 2) When possible and practicable, an agency member of the opposite sex should be requested for these types of searches.
- c. The purpose of this search is the following:
 - 1) Protecting the officer from attack.
 - 2) Preventing the person from escaping.
 - 3) Discovering or seizing the fruits of the crime for which the person has been arrested; or
 - 4) 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.
- d. This search may include the subject's pockets as well as any items they are in possession of at the time of the arrest. (For search incident to arrest in home-see home search policy-for incident to arrest search in vehicle see motor vehicle contacts policy)
- e. When the peace officer is in the process of effecting a lawful search, he may discover or seize any stolen or embezzled property, any item, substance, object, thing, or matter, the possession of which is unlawful, or any item, substance, object, thing, or matter, other than the private papers of any person, which is tangible evidence of the commission of a crime against the laws of this state.

F. Privilege from Arrest:

- a. Legislative Privilege
 - 1) A member of the General Assembly, while going to, attending, or returning from any session of the house to which he belongs shall not be arrested, menaced, or disturbed at any place in the Commonwealth of Kentucky except on legal process for treason, felony, or breach or surety of the peace.

- 2) It is declared to be the legislative intent of the General Assembly to prohibit the arrest of any member of the General Assembly at any place within the Commonwealth while going to, attending, or returning from any session of the house to which he belongs, except for treason, felony, or breach or surety of the peace.
- b. National Guard/State Militia
 - 1) No officer, warrant officer or enlisted man of the Kentucky National Guard or Kentucky active militia shall be arrested, except in case of a felony, while going to, remaining at, or returning from a place where he is ordered to attend for state active duty.
- G. 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 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 with 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.
- c. Procedure for Notification When a Foreign National is arrested.
- 1) 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.
 - 2) All foreign nationals must be told of their right to Consular notification.
 - 3) If the foreign national's country is not on the mandatory notification list:
 - (a) Offer, without delay, to notify the foreign national's consular officials of the arrest/detention.
 - (b) If the foreign national asks that consular notification be given, notify the nearest consular officials of the foreign national's country without delay.
 - 4) If the foreign national's country is on the list of mandatory notification countries:
 - (a) Notify that country's nearest consular officials, without delay, of the arrest/detention. Tell the foreign national that you are making this notification.
 - 5) Keep a written record of the provision of notification and actions taken.
- H. Strip Search: In order to conduct a strip search of an individual two threshold issues must be met:
- a. The person must first be arrested based upon probable cause to believe that person has or is committing a crime.
 - b. 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 which is out of view of the public and other persons.
 - c. 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.
 - d. Cross-gender strip searches are prohibited unless exigent circumstances exist that would justify such a search.
 - e. In all cases where a strip search has been conducted, the officer will document the following:
 - 1) The offense the suspect was arrested for.
 - 2) Facts and circumstances that led the officer to believe that the suspect was hiding weapons or contraband on his or her person.
 - 3) The way the search was conducted.

- 4) The persons who were present during the search.
- 5) The location where the search occurred.
- 6) The items that were recovered as a result of the search.