

	<b>SFASU POLICE DEPARTMENT</b>	
	<b>Policy 7.2 Field Interview, Consensual Encounters and Detentions</b>	
	<b>Effective Date: 04/29/19</b>	<b>Replaces:</b>
	<b>Approved: John Fields, Jr. Chief of Police</b>	
	<b>Reference: TBP 7.07</b>	

## I. POLICY

Per the US Supreme Court, there are only three types of encounters between police and civilians: (1) a consensual encounter in which the civilians voluntarily elect to stay and interact with the officer, (2) a detention based upon reasonable suspicion, which may include a frisk for weapons if the officer can state the facts and circumstances that justify the officer’s fear for their safety, and, (3) an arrest based upon probable cause. The agency expects and encourages officers to conduct field interviews. Field interviews are important contacts with individuals that aid in preventing and investigating crime. The agency expects officers to gather information with proper observance of constitutional safeguards. Strict constitutional guidelines exist that protect both the civil rights of all persons and the need of officers to obtain information crucial to the reduction and prevention of crime.

## II. PURPOSE

The purpose of this policy is to clearly establish the difference between a consensual encounter and an investigative detention or stop, and to assist officers in determining what compliance is required during field interviews and when frisks for weapons are lawful, necessary, and useful, and to establish procedures for conducting both safely (**TBP 7.07**).

## III. DEFINITIONS

- A. **Field interview:** A brief interview of a person to determine the person's identity and to gather information or to resolve the officer's suspicions about possible criminal activity or to determine if the person has information about a criminal offense. A field interview may take place during a consensual encounter or during a temporary detention. The difference is in the information known to the officer at the outset of the encounter, which establishes the encounter as either consensual in nature or a temporary detention based upon reasonable suspicion. Field interviews require voluntary cooperation of the subject for purposes of answering questions.

- B. **Frisk:** A "pat-down" search of outer garments for weapons.
- C. **Reasonable suspicion:** Articulate facts that, within the totality of the circumstances, lead an officer to reasonably suspect that criminal activity has been, is being, or is about to be committed. The reasonableness of an officer's actions will be determined by reviewing the totality of circumstances known to the officer at the time he or she takes the action.
- D. **Detention also known as an investigative detention, stop, Terry stop, or stop-and-frisk:** Requiring an individual to remain with the officer for a brief period of time for the purpose of investigating the actions of the individual. In order to make the stop, the officer must have reasonable suspicion to believe that criminal activity is afoot and that the person to be detained or stopped is involved. The combination of facts and circumstances must lead a reasonable officer to believe that the person to be detained is involved in criminal activity. It is not permissible to detain a person based upon mere suspicion or the officer's inarticulate hunch that the person is up to no good.

The following list of factors and circumstances may be used to build reasonable suspicion. This list is not all-inclusive nor is the presence of any one of these circumstances alone always sufficient for reasonable suspicion.

1. Officer has knowledge that the person has a criminal record;
2. A person fits the description of a wanted person;
3. A person has exhibited furtive conduct, such as attempting to conceal an object from the officer's view;
4. The appearance, behavior, or actions of the suspect indicate the person is involved in criminal activity;
5. The time of day or night;
6. The officer observes a vehicle that matches that of a broadcast description of a suspect vehicle;
7. A person exhibits unusual behavior, such as staggering or conduct indicating a need for medical assistance;
8. The suspect is in geographical and temporal proximity to the crime scene;
9. The suspect is carrying an unusual object, or his/her clothing bulges in a manner consistent with concealing a weapon;
10. Flight from the officer may be considered as a fact or circumstance, but mere flight alone, without additional facts or circumstances, will be insufficient to establish reasonable suspicion.

11. Firsthand observations by the officer;
12. Information from informants or members of the community;
13. Collective knowledge or information shared by other officers;
14. Reasonable inferences made by the officer from information known to the officer.

- E. **Consensual encounter**: an encounter between a police officer and a civilian in which a reasonable person would believe, based upon the circumstances of the encounter that compliance is not mandatory and he or she is free to decline to talk with the officer and is free to leave.

#### IV. CONSENSUAL ENCOUNTERS

A. Making the consensual encounter:

1. An officer may conduct a field interview at any time if an individual is willing to speak with the officer. A field interview requires voluntary cooperation from the individual. The individual may decline to answer any and all questions during either a stop or consensual encounter. The individual may leave at any time during a consensual encounter. The individual may refuse to produce identification or otherwise identify himself/herself during either a stop or a consensual encounter.
2. The officer shall articulate all the reasons for contacting the individual in the first place. The officer shall explain all the steps taken in contacting the individual. Officers should note that if the initial encounter is deemed a seizure by the court, the officer will be required to justify his/her initial detention by describing specific and articulable facts which, taken together with rational inferences from those facts, established reasonable suspicion for that detention. See III. D. above.

B. Place of the interview:

1. As a general rule, field interviews may be conducted anywhere the officer has a right to be, including the following:
  - a. University-owned or controlled property, normally open to members of the public.
  - b. Areas intended for public use or normally exposed to public view.
  - c. Places to which an officer has been admitted with the consent of the person empowered to give such consent.

- d. Places where circumstances require a lawful immediate law enforcement presence to protect life, well-being, or property.
  - e. Areas where an officer may be admitted pursuant to a lawful arrest or search warrant.
2. Consensual encounters or stops shall not be done to coerce a person to leave an area or place where he or she has a legitimate right to be and where no violation of law has occurred.

C. Conduct of Interviews during a Consensual Encounter:

1. Officers shall clearly identify themselves and, if not in uniform, display identification.
2. As noted above, a person participating in a consensual encounter with an officer may discontinue the interview at any time. To repeat, during a consensual encounter, persons shall not be detained in any manner against their will nor shall they be required to answer questions or respond in any manner if they choose not to do so. Since the distinction between a consensual encounter and a detention depends to a great extent on whether, under the circumstances, the subject perceives that he/she is free to leave, officers shall comply with the following guidelines:
  - a. All requests during the interview should be phrased with neutral or optional words, such as "may," "would you mind," etc.
  - b. The duration of an interview should be as brief as possible unless it is prolonged by the subject.
  - c. During the interview, officers should confine their questions to those concerning the suspect's identity, place of residence, and other matters necessary to resolve the officer's suspicions.
  - d. Miranda warnings are not required during consensual encounters. The warnings are not required until custodial questioning takes place.
3. The success or failure in obtaining information beneficial to crime analysis and criminal investigation will depend upon an officer's ability to put individuals at ease and establish rapport. However, during a field interview, if the person should ask whether he/she must respond, or indicate that he/she feels compelled to respond, the officer shall immediately inform him/her of the right to refuse and the right to leave.

- a. When a person refuses or ceases to cooperate during an interview, the refusal itself cannot be used as the basis for escalating the encounter into a detention.
- b. Individuals cannot be compelled to answer any questions during field interviews conducted during consensual encounters.

## **V. INVESTIGATIVE DETENTION OR STOP (and frisk when warranted)**

- A. The legal authority to conduct an investigative detention or stop (and frisk when warranted) is based in federal and state constitutions as interpreted by court decisions. A frisk is defined as a limited search for weapons.
- B. Investigative detentions may involve two distinct acts. The first is the actual detention or stop and it is based on reasonable suspicion. A second component may be a frisk of the detainee for weapons. The frisk must be justified by the officer's reasonable fear for his/her safety during the detention. The safety concern must arise from the conduct of the detained person, not from safety concerns in general. For example, a frisk could not be justified solely on the claim that "all drug dealers are dangerous." Not every detention will result in a frisk. Examples of safety factors justifying a frisk may include but are not limited to the following:
  1. The type of crime being investigated, particularly those involving weapons;
  2. When the officer must confront multiple suspects;
  3. The time of day and location of the stop;
  4. Prior knowledge of the suspect's propensity for violence;
  5. Any indication that the suspect is armed;
  6. Age and sex of the suspect. Officers shall exercise caution with very young or very old people or persons of the opposite sex;
  7. Demeanor of the suspect;
  8. Failure or refusal to follow simple commands;
  9. Statements made by the suspect;
  10. Aggressive actions or statement made by the suspect.
- C. Manner of conducting a frisk:
  1. Ideally, two or more officers will conduct the frisk, one to search and the other to provide protective cover.

2. The minimally intrusive nature of a frisk permits the suspect to be searched while standing, or with hands placed against a stationary object, feet spread apart, which is the preferred method.
3. When frisking, officers shall pat-down only the external clothing for objects that reasonably could be weapons and remove them. Retrieval of the weapon may give probable cause to arrest. If so, officers may then conduct a complete custodial search of the suspect incident to arrest.
4. If, during a lawful detention based on reasonable suspicion, the officer conducts a frisk and feels an object whose contour or mass makes its identity as contraband immediately apparent, pursuant to the plain-touch doctrine, it may be withdrawn and examined.
5. If the suspect is carrying a bag, purse, suitcase, briefcase, sack, or other container that may conceal a weapon, officers may squeeze the container to determine if it contains a weapon. Officers shall not open the container but shall place it beyond the subject's reach for the duration of the stop.

#### D. Protective search

1. Under some conditions, the protective frisk may be extended beyond the person detained. This frisk occurs most often involving vehicles. A lawful, protective search for weapons, which extends to an area beyond the person in the absence of probable cause to arrest, must have all of the following elements present:
  - a. A lawful detention as defined herein or a lawful vehicle stop.
  - b. A reasonable belief that the suspect poses a danger.
  - c. A frisk of the subject must occur first.
  - d. The search must be limited to those areas in which a weapon may be placed or hidden.
  - e. The search must be limited to an area that would ensure that there are no weapons within the subject's immediate grasp.
  - f. If the suspect has been arrested and removed from immediate access to the vehicle, a search of the vehicle cannot be made for protective reasons. The protective frisk of the vehicle may only occur if the suspect is to be returned to the vehicle. A search may be made of the vehicle if other exceptions to a search warrant exist.

E. Period of detention:

1. Investigative detention must be conducted as quickly as possible. Once the detaining officer determines that the basis for reasonable suspicion no longer exists, or that additional facts and circumstances are not being developed, the person detained shall be released. Should the initial reasonable suspicion be reinforced with additional information that develops probable cause, the period of detention could be lengthened. The courts have not established an exact time limit for detentions, but case law suggests detentions are measured in increments of less than an hour.

## **VI. DOCUMENTING THE INTERVIEW OR STOP**

For purposes of successful prosecution and of defending departmental actions to the public, all field interviews and investigative detentions must be recorded. The following methods will be utilized:

- A. Patrol officers will record all field interviews in their entirety on the in-car audio video and/or body camera systems. Officers will attempt to position the vehicle or camera in a position to record the interview. If not possible, the use of the audio portion is required.
- B. If an interview or investigative detention results in an arrest, the arresting officer will clearly detail the reasonable suspicion that led to the interview or detention in the narrative of the arrest report as well as maintaining the audio/video recording as evidence.
- C. Officers not equipped with in-car or portable audio/video recording systems will obtain a service number and create an incident report entitled "Field Interview" and record the reasonable suspicion and details of the interview or detention. The report will be forwarded through the officer's supervisor to the records unit.