

Detentions And Photographing Detainees

440.1 PURPOSE AND SCOPE

The purpose of this policy is to establish guidelines for conducting field interviews (FI) and pat-down searches, and the taking and retention of photographs of persons detained in the field but not arrested. Due to a variety of situations confronting the officer, the decision to FI or photograph a field detainee shall be left to the discretion of the involved officer based on the totality of the circumstances available to the officer at the time of the detention.

440.2 DEFINITIONS

Definitions related to this policy include:

Detention -Occurs when an officer intentionally, through words, actions or physical force causes an individual to reasonably believe he/she is being required to restrict his/her movement. Detentions also occur when an officer actually restrains a person's freedom of movement.

Consensual Encounter-Occurs when an officer contacts an individual but does not create a detention through words, actions or other means. In other words, a reasonable individual would believe that his/her contact with the officer is voluntary.

Field Interview (FI) -The brief detainment of an individual, whether on foot or in a vehicle, based on reasonable suspicion for the purpose of determining the individual's identity and resolving the officer's suspicions.

Field Photographs -Posed photographs taken of a person during a contact, detention or arrest in the field. Undercover surveillance photographs of an individual and recordings captured by the normal operation of a Mobile Audio Video(MAV) system when persons are not posed for the purpose of photographing are not considered field photographs.

Pat-Down Search -This type of search is used by officers in the field to check an individual for weapons. It involves a thorough patting down of clothing to locate any weapons or dangerous items that could pose a danger to the officer, the detainee or others.

Reasonable Suspicion -Occurs when, under the totality of the circumstances, an officer has articulable facts that criminal activity may be afoot and a particular person is connected with that possible criminal activity.

440.3 FIELD INTERVIEWS

Officers may stop individuals for the purpose of conducting an FI where reasonable suspicion is present. In justifying the stop, the officer should be able to point to specific facts which, when taken together with rational inferences, reasonably warrant the stop. Such facts include, but are not limited to:

- The appearance or demeanor of an individual that suggests he/she is part of a criminal enterprise or is engaged in a criminal act.
- The actions of the suspect that suggest he/she is engaged in a criminal activity.

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- Whether the hour of day or night is inappropriate for the suspect's presence in the area.
- The suspect's presence in the particular area is suspicious.
- The suspect is carrying a suspicious object.
- The suspect's clothing bulges in a manner that suggests he/she is carrying a weapon.
- The suspect is located in proximate time and place to an alleged crime.
- The officer has knowledge of the suspect's prior criminal record or involvement in criminal activity.

All FI cards shall be maintained in a physically secure location. FI cards are accessible only to law enforcement personnel with Arizona Criminal Justice Information System (ACJIS) clearance and the crime analyst who is conducting official police business. The FI cards shall be kept separate from the central records files and be classified as closed records.

FI files shall be retained and purged in accordance with the current departmental policy concerning the purging of official records.

440.3.1 INITIATING A FIELD INTERVIEW

Based on observance of suspicious circumstances or upon information from investigation, an officer may initiate the stop of a person when there is articulable, reasonable suspicion to do so. A person, however, should not be detained longer than is reasonably necessary to resolve the officer's suspicions.

- Field interrogations do not require the rights admonition prior to interrogation as long as questions are limited to a request for name, address, and explanation of actions.
(1.2.3.b)

A subject may be detained to conduct an FI only for the period reasonably necessary to determine the individual's identity and resolve the officer's suspicions. The interview should not extend beyond the immediate vicinity of the place where the detention was first affected unless the detainee is arrested.

Nothing in this policy is intended to discourage consensual contacts. Frequent and random casual contacts with consenting individuals are encouraged by the Peoria Police Department to strengthen our community involvement, community awareness and problem identification.

Officers shall submit their completed FI cards to their immediate supervisor for review. The immediate supervisor shall review and initial the FI cards by the name of the submitting officer to indicate their approval and forward them to the Records Unit.

440.3.2 WITNESS IDENTIFICATION AND INTERVIEWS

Because potential witnesses to an incident may be lost or the integrity of their statements compromised with the passage of time, officers should, when warranted by the seriousness of the case, take reasonable steps to promptly coordinate with an on-scene supervisor and/or criminal investigator to utilize available personnel for the following:

Identifying all persons present at the scene and in the immediate area.

- When feasible, a recorded statement should be obtained from those persons who claim not to have witnessed the incident but who were present at the time it occurred.

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- Any potential witness who is unwilling or unable to remain available for a formal interview should not be detained absent reasonable suspicion to detain or probable cause to arrest. Without detaining the individual for the sole purpose of identification, officers should attempt to identify the witness prior to his/her departure.

Witnesses who are willing to provide a formal interview should be asked to meet at a suitable location where criminal investigators may obtain a recorded statement. Such witnesses, if willing, may be transported by Department personnel.

- A written, verbal or recorded statement of consent should be obtained prior to transporting a witness in a Department vehicle. When the witness is a minor, consent should be obtained from the parent or guardian, if available, prior to transport.

440.4 PAT-DOWN SEARCHES

A pat-down search of a detained subject may be conducted whenever an officer reasonably believes that the person may possess an object that can be utilized as an offensive weapon or whenever the officer has a reasonable fear for his/her own safety or the safety of others. Circumstances that may establish justification for performing a pat-down search include, but are not limited to, the following:

- (a) The type of crime suspected, particularly in crimes of violence where the use or threat of weapons is involved.
- (b) Where more than one suspect must be handled by a single officer.
- (c) The hour of the day and the location or area where the stop takes place.
- (d) Prior knowledge of the suspect's use of force and/or propensity to carry weapons.
- (e) The appearance and demeanor of the suspect.
- (f) Visual indications that suggest the suspect is carrying a firearm or other weapon.
- (g) The age and gender of the suspect.

When reasonably possible, pat-down searches should be performed by officers of the same gender as the suspect.

440.5 FIELD PHOTOGRAPHS

Before photographing any field detainee, the officer shall carefully consider, among other things, the factors listed below.

440.5.1 FIELD PHOTOGRAPHS TAKEN WITH CONSENT

Field photographs may be taken when the subject of the photograph knowingly and voluntarily gives consent. When taking a consensual photograph, the officer may have the individual read and sign the appropriate form accompanying the photograph when practical.

440.5.2 FIELD PHOTOGRAPHS TAKEN WITHOUT CONSENT

Field photographs may be taken without consent only if they are taken during a detention that is based upon reasonable suspicion of criminal activity, and the photograph serves a legitimate law enforcement purpose related to the detention. The officer must be able to articulate facts that reasonably indicate that the subject was involved in or was about to become involved in criminal conduct.

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If, prior to taking a photograph, the officer's reasonable suspicion of criminal activity has been dispelled, the detention must cease and the photograph should not be taken.

All field photographs and related reports shall be submitted to a supervisor and retained in compliance with this policy.

440.6 SUPERVISOR RESPONSIBILITIES

While it is recognized that field photographs often become valuable investigative tools, supervisors should monitor such practices in view of the above listed considerations. This is not to imply that supervisor approval is required before each photograph. Access to field photographs shall be strictly limited to law enforcement purposes.

440.7 DISPOSITION OF PHOTOGRAPHS

All detainee photographs must be adequately labeled and submitted to the Patrol Lieutenant with either an associated FI card or other memorandum explaining the nature of the contact. If an individual is photographed as a suspect in a particular crime, the photograph should be submitted as an evidence item in the related case, following standard evidence procedures.

If a photograph is not associated with an investigation where a case number has been issued, the Patrol Lieutenant should review and forward the photograph to one of the following locations:

- If the photo and associated FI or memorandum is relevant to criminal gang enforcement, the Patrol Lieutenant will forward the photo and documents to the Gang Supervisor. The Gang Supervisor will ensure the photograph and supporting documents are retained as prescribed in the Criminal Street Gangs Policy.
- Photographs that do not qualify for retention in the criminal gang file or that are not evidence in an investigation with an assigned case number should be forwarded to the Records Section. These photographs will be purged as described in this policy.

When a photograph is taken in association with a particular case, the investigator may use such photograph in a photo lineup. Thereafter, the individual photograph should be retained as a part of the case file. All other photographs will be kept in the Records Section in a separate non-booking photograph file in alphabetical order.

440.7.1 PURGING THE FIELD PHOTO FILE

The Records Supervisor will be responsible for ensuring that photographs maintained by the Records Section that are more than one year old and no longer serve a law enforcement purpose are periodically purged and destroyed unless a longer period of retention is required by the Department records retention schedule. No record may be destroyed unless done in compliance with such a schedule unless ordered by a court or pursuant to other applicable statute. Photographs that continue to serve a law enforcement purpose may be retained longer than one year provided that a notation of that fact is added to the file for each additional year that they are retained. Access to the FI photo file shall be strictly limited to law enforcement purposes and personnel.

A photograph need not be purged but may be retained as an updated photograph in a prior booking file if the person depicted in the photograph has been booked at the Peoria Police Department and the booking file remains in the Records Section.

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440.8 PHOTO REVIEW POLICY

Any person who has been the subject of a field photograph or an FI by this department during any contact other than an arrest may file a written request within 30 days of the contact requesting a review of the status of the photograph/FI. The request shall be directed to the Chief of Police, who will ensure that the status of the photograph or FI is properly reviewed according to this policy as described below. Upon a verbal request, the Department shall send a request form to the requesting party along with a copy of this policy.

440.8.1 REVIEW PROCESS

Upon receipt of such a written request, the Chief of Police or a designee will permit the individual to appear in person. Any minor must be accompanied by a parent or legal guardian for a review of the status of the photograph/FI.

Such a meeting will generally be scheduled during regular business hours within 30 days of the receipt of the written request. An extension of the 30 day limit may be made either upon the mutual convenience of the parties or if, at the discretion of the Chief of Police, there appears to be an ongoing legitimate law enforcement interest which warrants a delay. If the delay could jeopardize an ongoing investigation, nothing in this policy shall require the Chief of Police to disclose the reason for the delay.

A meeting for the review of the status of any non-arrest photograph/FI is not intended to be a formal hearing, but simply an informal opportunity for the individual to meet with the Chief of Police or a designee to discuss the matter.

After carefully considering the information available, the Chief of Police or a designee will determine, generally within 30 days of the original meeting, whether the photograph/FI was obtained in accordance with existing law and Peoria Police Department policy and, even if properly obtained, whether there is any ongoing legitimate law enforcement interest in retaining the photograph/FI.

If the Chief of Police or a designee determines that the photograph/FI was obtained in accordance with existing law and Department policy and that there is an ongoing legitimate law enforcement interest in retaining the non-arrest photograph, the photograph/FI shall be retained according to this policy and applicable law.

If the Chief of Police or a designee determines that the original legitimate law enforcement interest in retaining a non-arrest photograph no longer exists or that it was obtained in violation of existing law or Peoria Police Department policy, the original photograph will be destroyed or returned to the person photographed, if requested. All other associated reports or documents, however, will be retained according to Department policy and applicable law.

If the Chief of Police or a designee determines that the original legitimate law enforcement interest in retaining a non-arrest FI no longer exists or that the original FI was not obtained in accordance with established law or Peoria Police Department policy, the original FI may only be destroyed upon the execution of a full and complete waiver of liability by the individual (and guardian if a minor).

If the Chief of Police or a designee determines that any involved Peoria Police Department personnel violated existing law or Department policy, the Chief of Police or a designee shall initiate a separate internal investigation which may result in additional training, discipline or other appropriate action for the involved employee.

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The person photographed/FI will be informed in writing within 30 days of the Chief of Police's determination whether the photograph/FI will be retained. This does not entitle any person to any discovery or access to any law enforcement records not otherwise authorized by law.