

## **Investigative Detentions**

### **5.03.01 PURPOSE**

This order establishes policies and procedures regarding investigative detentions.

### **5.03.02 POLICY**

It is the policy of the San Francisco Police Department that everyone has the right to use the public streets and public places so long as they do not engage in criminal activity. Factors such as the person's race, color, ethnicity, national origin, religion, age, gender identity or expression, sexual orientation, mental or physical disability, dress, disheveled or impoverished appearance or socio-economic status do not justify even a brief detention, a request for identification, or an order to move on, nor do general complaints from residents, merchants, or others. (SEE DGO 5.17, Bias-Free Policing Policy)

- A. Requests for Identification** - The refusal or failure of a person to identify themselves or to produce identification upon request of a police officer cannot be the sole cause for arrest or detention. A member may not threaten a person with arrest solely for refusing to identify themselves. However, refusal or failure of a person to identify themselves after being apprehended for an infraction or misdemeanor is grounds for custodial arrest pursuant to DGO 5.06 Citation Release, DGO 9.01 Traffic Enforcement and Penal Code §§ 853.S(a); 853.6 (i)(5).
  
- B. Orders to Move On** - Members do not have the authority to order persons to "move on" absent probable cause to believe an offense has occurred, or absent articulable facts requiring movement for public safety or victim/witness privacy. Also see DGO 5.07, Rights of Onlookers.

### **5.03.03 DEFINITIONS**

- A. Consensual Encounters** - A consensual encounter occurs when a reasonable person would feel free to leave or to refuse to cooperate with the police, and no reasonable suspicion is required on the part of the officer. Consensual encounters may elevate to a detention based on the officer's actions that create a reasonable belief that the person is no longer free to leave. A detention does not occur when a police officer merely approaches an individual on the street and asks a few questions.

- B. Detention** - A detention is a seizure of a person by an officer that results from submission to unequivocal verbal commands, physical restraint, and/or words or conduct by an officer resulting in a reasonable person believing that they are not free to leave or otherwise disregard the officer.
- C. Objective Reasonableness** - Reasonable suspicion to detain or pat search are based on an objective analysis of the totality of the circumstances known at the time of the detention or pat search, including observations, training and experience, and information from eyewitnesses, victims and/or other members.
- D. Reasonable Suspicion to Detain** - Reasonable suspicion is a set of specific facts that would lead a reasonable person to believe that a crime is, was, or is about to occur and the person under suspicion is reasonably connected to the crime. Reasonable suspicion to detain is also established whenever there is any violation of law. Reasonable suspicion cannot be based solely on a hunch or instinct.
- E. Reasonable Suspicion to Conduct a Pat Search** - A pat search allows officers to safely pursue their investigation without fear of violence, not to discover evidence of a crime. Two conditions must be met before a pat search is permitted:
1. The underlying detention must be legal.
  2. The officer must be able to point to specific and articulable facts causing them to believe the suspect is armed and dangerous. The validity of a pat search depends on the totality of the circumstances and turns on whether a reasonably prudent officer would be warranted in the belief that the officer's safety, or that of others, was in danger.
- F. De Facto Arrest** - A de facto arrest occurs when an officer takes unreasonable or unnecessary actions during an investigative detention. A lawful temporary detention may become an unlawful de facto arrest in violation of the Fourth Amendment, making the detention unlawful. The following combination of factors may elevate an investigative detention into a de facto arrest: an unreasonably lengthy detention, the use of restraints without officer safety justification, the use of force beyond what is necessary to effect the detention, and the transportation of a detainee without valid consent.
- G. Probable Cause to Arrest** - Probable cause to arrest is a set of specific facts that would lead a reasonable person to objectively believe and strongly suspect that a crime was committed by the person to be arrested. Under the Fourth Amendment, arrests must be supported by probable cause.

## **5.03.04 PROCEDURES**

**A. Duties of Detaining Member** - Members shall do the following (with consideration for officer safety) when conducting an investigative detention:

1. Be courteous and professional. (SEE DGO 2.01, General Rules of Conduct)
2. Approach the person being stopped, identify themselves by their name and rank and provide an explanation for the detention as soon as practical and when safe. When effecting a vehicle stop, members shall provide this information before asking the driver for a driver's license and registration.
3. Answer questions the person may have regarding the detention.

**B. Conducting a Pat Search** - Members may conduct a pat search for weapons when:

1. The person is lawfully detained
2. The officer has specific and articulable facts causing them to believe the suspect is armed and dangerous. The validity of a pat search depends on the totality of the circumstances and turns on whether a reasonably prudent officer would be warranted in the belief that the officer's safety, or that of others, was in danger.

If conditions (1) and (2) are met, the officer may perform a carefully limited search of the person's outer clothing for weapons, i.e. a pat search, whether or not the officer has probable cause to arrest. The pat search must be limited to that which is necessary for the discovery of guns, knives, clubs, or other hidden instruments which might be used to harm the officer or others nearby.

A pat search is not a search for evidence or contraband. Once a member realizes an object is not a weapon or an object that can be used as a weapon, the member may not further manipulate the object; they must move on. Any additional manipulation of the item is outside the scope of a cursory/pat search for weapons and will be considered an illegal search.

**C. Certificate of Release**

1. Certificate of Release Requirement. Cal. Penal Code section 849(b) requires a Certificate of Release when a person is arrested without a warrant and released from custody, and is not taken before a magistrate because:
  - a. The member is satisfied that there are insufficient grounds for making a criminal complaint against the person arrested.
  - b. The person was arrested only for being under the influence of a controlled substance or drug and the person is delivered to a facility or hospital for treatment

and no further proceedings are desirable.

- c. The person was arrested and subsequently delivered to a hospital or other urgent care facility, including, but not limited to, a facility for the treatment of co-occurring substance uses disorders, for mental health evaluation and treatment, and no further proceedings are desirable. All other detentions or arrests do not require a Certificate of Release.

## 2. Documenting Detentions and Searches Using Body Worn Camera.

- a. Members shall use their body worn camera to document the reason for the detention in all instances when a person is detained as defined in 5.03.02(B) in this DGO. Members shall identify by name each person detained and articulate the specific set of facts that established the reasonable suspicion to detain the person (5.03.02(D)).
- b. If a pat search was conducted, the officer shall also articulate on BWC the specific set of facts that established the reasonable suspicion to conduct the pat search (5.03.02(E), 5.03.03(B)). Members must cite on the BWC as many factors as possible and focus the articulation on why a pat search was conducted. Members must state why they believed the subject is armed and dangerous before a pat search is permitted as well as the source and age of any information you rely on to conduct a pat search. Be cautious about relying solely on information about environmental factors rather than the subject's conduct. Factors can include, but are not limited to, the following:
  - Crime under investigation
  - Known or suspected weapon possession
  - Weapon discovered/observed
  - Prior knowledge of suspect
  - Suspect's mental state
  - Bulge in clothing (ex. baggy or inconsistent w/ weather)
  - Suspect appears overly nervous
  - Attempting to hide something that may be contraband
  - Specific knowledge of crime trends and crime patterns in the area
  - Nighttime or darkness of area
  - Ambiguous response to questions
  - Officers outnumbered
- c. Members shall include "Investigative Detention," in the comments of their CAD, and note whether or not the detention was captured on body worn camera and list the name of each person detained.
- d. If a member determined that officer or public safety would be compromised if a

BWC were activated during an incident requiring its use, the member shall document in CAD, the reason(s) for not using the BWC.

Depending on the nature of the incident, a member may submit an incident report if the officer deems it necessary or at the direction of a supervisor. If a member writes an incident report to document a detention, the report should include “Investigative Detention,” as one of the titles of the incident report, list the person as “D” detained, and articulate the specific set of facts that established the reasonable suspicion to detain the person. If an incident report is written and the detention is not recorded on a body worn camera, the member shall document the reason for not using the body worn camera.

**D. Consensual Encounters** - For consensual encounters, members shall provide, if requested:

1. The member's name, star number, and assignment. (See DGO 2.01, General Rules of Conduct).
2. Written information regarding the filing of a commendation or complaint that includes SFPD's and DPA's website addresses. (See DGO 2.04, Complaints Against Officers).

**E. Warrant Checks (Policy)** - See DGO 6.18, Warrant Arrests.

### **References**

DGO 2.01, General Rules of Conduct

DGO 2.04, Complaints Against Officers

DGO 5.06, Citation Release

DGO 5.07, Rights of Onlookers

DGO 5.17, Bias-Free Policing Policy

DGO 6.18, Warrant Arrests

DGO 7.01, Policies and Procedures for Juvenile Detention, Arrest and Custody

DGO 9.01, Traffic Enforcement

Penal Code Section 849(b)

Penal Code § 853.S(a)

Penal Code § 853.6(i)(5)