

## Contacts and Temporary Detentions

### 1103.1 PURPOSE AND SCOPE

The purpose of this policy is to establish guidelines for temporarily detaining but not arresting persons in the field, conducting field interviews (FI), conducting pat-down frisks, and the taking and disposition of photographs.

#### 1103.1.1 DEFINITIONS

Definitions related to this policy include:

**Consensual encounter** - When a deputy contacts an individual but does not create a detention through words, actions or other means. In other words, a reasonable individual would believe that he/she is free to leave.

**Field Interview (FI)** - The documentation of an encounter with an individual, whether on foot or in a vehicle, and may be either a voluntary encounter or a detention based on reasonable suspicion.

**Field photographs** - Posed photographs taken of a person during a consensual encounter or FI. Undercover surveillance photographs of an individual and recordings captured by the normal operation of a public safety camera when persons are not posed for the purpose of photographing are not considered field photographs.

**Pat-down frisk** - A type of search used by deputies in the field to check an individual for dangerous weapons. It involves a thorough patting down of clothing based on reasonable suspicion to locate any weapons or dangerous items that could pose a danger to the deputy, the detainee or others.

**Reasonable suspicion** - When, under the totality of the circumstances, a deputy has articulable facts to suspect that criminal activity may be afoot and a particular person is connected with that possible criminal activity.

**Temporary detention** - When a deputy intentionally, through words, actions or physical force causes a reasonable individual to believe he/she is required to restrict his/her movement without an actual arrest.

### 1103.2 POLICY

The Montgomery County Sheriff's Office respects the right of the public to be free from unreasonable searches or seizures. Due to an unlimited variety of situations confronting the deputy, the decision to engage in voluntary encounters with, or temporary detentions of, a person and complete an FI, pat-down search or field photograph shall be left to the deputy based on the totality of the circumstances, officer safety considerations and constitutional safeguards.

### 1103.3 FIELD INTERVIEWS

A deputy may initiate the stop of a person and conduct an FI when there is articulable, reasonable suspicion to do so. A person, however, shall not be detained longer than is reasonably necessary to resolve the deputy's suspicion.

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Nothing in this policy is intended to discourage voluntary encounters. Frequent casual contact with consenting individuals is encouraged by the Montgomery County Sheriff's Office to strengthen community involvement, community awareness and problem identification.

#### **1103.3.1 INITIATING A FIELD INTERVIEW**

When deemed appropriate, a voluntary encounter should be attempted prior to a detention. When making a decision to initiate a stop or detention, the deputy should be able to point to specific facts which, when considered with the totality of the circumstances, reasonably warrant the stop or detention. Such facts include, but are not limited to, an individual's:

- (a) Appearance or demeanor suggesting that he/she is part of a criminal enterprise or is engaged in a criminal act.
- (b) Actions suggesting that he/she is engaged in a criminal activity.
- (c) Presence in an area at an inappropriate hour of the day or night, inclement weather.
- (d) Presence in a particular area is suspicious.
- (e) Carrying of suspicious objects or items.
- (f) Excessive clothes for the climate or clothes bulging in a manner that suggest he/she is carrying a dangerous weapon.
- (g) Location in proximate time and place to an alleged crime.
- (h) Physical description or clothing worn that matches a suspect in a recent crime.
- (i) Prior criminal record or involvement in criminal activity as known by the deputy.

#### **1103.4 PAT-DOWN FRISK**

Once a valid stop or detention has been made, a deputy may pat a suspect's outer clothing if the deputy has a reasonable, articulable suspicion that the suspect has a dangerous weapon that may present a threat to the officer's safety. The purpose of this limited search is not to discover evidence of a crime, but to allow the deputy to pursue the investigation without fear of violence. Circumstances that may establish justification for performing a pat-down search include, but are not limited to:

- (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 deputy.
- (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 actions and demeanor of the suspect.
- (f) Visual indications which suggest that the suspect is carrying a firearm or other dangerous weapon.

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Other aspects related to warrantless searches may arise during this encounter, such as the doctrine of plain feel. Members should remain current in their understanding of case law relating to such searches.

Whenever practicable, a pat-down search should not be conducted by a lone deputy. A cover deputy should be positioned to ensure safety and should not be involved in the search.

#### **1103.5 FIELD PHOTOGRAPHS**

All available databases should be searched before photographing any field detainee. If a photograph is not located, or if an existing photograph no longer resembles the detainee, the deputy shall carefully consider, among other things, the factors listed below.

##### **1103.5.1 FIELD PHOTOGRAPHS TAKEN WITH CONSENT**

Field photographs may be taken when the subject being photographed knowingly and voluntarily gives consent.

##### **1103.5.2 FIELD PHOTOGRAPHS TAKEN WITHOUT CONSENT**

Field photographs may be taken without consent if:

- (a) The person has been arrested or committed to a detention facility.
- (b) The person cannot be identified by a valid form of identification and is charged with:
  1. Driving while impaired (DWI).
  2. Driving while license revoked for DWI.
- (c) The person has been cited for a motor vehicle violation, does not produce a valid drivers license and the deputy has a reasonable suspicion concerning the person's identity. Field photographs taken of the operator of a motor vehicle shall:
  1. Only be taken from the neck up.
  2. Be taken at either the location where the citation is issued or at the jail if an arrest is made.
  3. Not be used for any purpose other than to confirm the identity of the alleged offender.
  4. Be retained until the final disposition of the case.
  5. Be destroyed upon a final disposition.
- (d) The purpose of the photograph is to show the person is intoxicated.
- (e) Taken for other evidentiary use.
- (f) A non-testimonial order has been issued.

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#### 1103.5.3 DISPOSITION OF PHOTOGRAPHS

All detainee photographs must be adequately labeled and submitted to the shift supervisor with either a citation or report explaining the nature of the contact.

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

- (a) If the photograph is relevant to criminal organization/enterprise enforcement, the shift supervisor will forward the photograph and documents to the designated criminal investigation supervisor. The supervisor will ensure the photograph and supporting documents are retained as prescribed in the Policy.
- (b) Photographs that do not qualify for retention in a criminal intelligence system or that are not evidence in an investigation with an assigned case number shall be destroyed.

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 shall be retained in accordance with the established records retention schedule.

Photographs of juveniles taken, shall only be maintained and destroyed pursuant to state law.

#### 1103.5.4 SUPERVISOR RESPONSIBILITIES

While it is recognized that field photographs often become valuable investigative tools, supervisors will monitor such practices in view of the above listed considerations. This is not to imply that supervisor approval is required before each photograph is taken.

Access to, and use of, field photographs shall be strictly limited to law enforcement purposes.

#### **1103.6 WITNESS IDENTIFICATION AND INTERVIEWS**

Because potential witnesses to an incident may become unavailable or the integrity of their statements compromised with the passage of time, deputies 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 Deputies for the following:

- (a) Identifying all persons present at the scene and in the immediate area.
  - 1. When feasible, a recorded statement should be obtained from those who claim not to have witnessed the incident but who were present at the time it occurred.
  - 2. 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, deputies should attempt to identify the witness prior to his/her departure.

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- (b) 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 Deputies
  - 1. A written, verbal or recorded statement of consent should be obtained prior to transporting a witness. When the witness is a minor, consent should be obtained from the parent or guardian, if available, prior to transport.