

## **Investigative Detentions**

This order establishes policies and procedures regarding investigative detentions.

### **5.03.01 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, Policy Prohibiting Biased Policing)

- 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, DGO 9.01 and Penal Code §§ 853.5(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.

### **5.03.02 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

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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.

### 5.03.03 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, Rule 14.)
  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 for an investigative purpose; and

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. **Detentions** - Except in exigent circumstances, members shall issue a Certificate of Release in instances when a person is not free to leave.

In cases when a member is unable to issue a Certificate of Release due to exigent circumstances, the member shall document the reasons in the incident report.

Members are not required to issue a Certificate of Release when giving a warning to a person stopped for a traffic related offense. The member giving the warning shall offer the person their business card unless it would be unsafe to do so or exigent circumstances exist.

2. **Public Safety Exceptions** - If a member moves a person for safety during a critical incident (active shooter, bomb threat, gas leak, flooding, earthquake, etc.) or mass evacuation, the member does not need to issue a Certificate of Release or prepare an incident report. If requested, the member shall promptly and politely provide their name, star number and assignment or their business card. (See DGO 2.01, Rule 14).
3. **Questionable Situations** - In cases where a member has a doubt about whether to issue a Certificate of Release, the member shall issue the form.
4. **Form Preparation and Filing** - Members shall complete the Certificate of Release form in duplicate. Members shall give the original Certificate of Release to the person being released and book the second copy of the Certificate of Release into evidence. Members shall upload a scanned copy of the Certificate of Release to the incident report.

- D. **Incident Reports** - Members shall prepare an incident report in all cases when a Certificate of Release is issued. Members shall 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

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established the reasonable suspicion to detain the person. If a pat search was conducted, the officer shall also articulate the specific set of facts that established the reasonable suspicion to conduct the pat search.

**E. 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, Rule 14).
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).

**F. 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, Policy Prohibiting Biased Policing

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 § 853.5(a)

Penal Code § 853.6(i)(5)