



# Petaluma Police Department BRIEFING TRAINING RECORD

TMS

EMPLOYEES					
Name	ID#	Name	ID#	Name	ID#

TRAINING SUMMARY			
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Date of Training 1/8/2020	Length of Training HRS:          MIN: 30	Time of Training START: <b>1610</b> END: <b>1640</b>	Location <input checked="" type="checkbox"/> Main Station <input type="checkbox"/> Other: _____
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Type of Training			
<input type="checkbox"/> Video	<input type="checkbox"/> Lecture	<input type="checkbox"/> Practical Demonstration	<input checked="" type="checkbox"/> Discussion <input type="checkbox"/> Other: _____

**ATTACH TRAINING MATERIALS.** PowerPoint, case law, etc. Exclude department policies.

**TRAINING TOPIC(S): General Description of Training**

- EXAMPLE*
- Use of Force: PPD Policy 300 – Discussion / Handouts
  - Search & Seizure: Vehicle searches, Arizona v Gant – Discussion / PowerPoint

Detentions, Terry Frisks, Consensual contacts.

Supervisory Review			
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Trainer B. Sawyer #3108	ID# 3108	Supervisor R. Cox	ID# 1770
Lieutenant <i>[Signature]</i>	ID# 1359	Date 1/14/20	

# CONSENSUAL ENCOUNTER, DETENTION + ARREST

**11.11 CONTACTS** - Any interaction between an officer and a person that does not involve restraint of a person's freedom of movement. A person cannot claim a "seizure" just because he or she was approached or addressed by an officer. During a contact, one is free not to cooperate and can leave the scene at anytime. Examples:

\* "Case law accepts the risk that officers may approach and converse with innocent people." If the officer does not learn facts rising to the level of reasonable suspicion, the individual must be allowed to go on his way" (Illinois v. Wardlow, U.S., 1/00); Refusal to cooperate during a contact does not furnish the justification needed for a detention (Florida v. Royer, U.S., 1991).

"In examining the 'totality of circumstances' in a contact, we think both the form and content are important". "But here, the officer testified his general tone of voice, the demeanor of his conversation was no different from those presumably gentlemanly qualities he displayed in the witness box" (Peo. v. Lopez, 4DCA, 7/89).

"Not every interaction between police and citizens involves a detention. The key issue is would a reasonable, innocent person feel free to leave?" (Florida v. Bostick, U.S., 6/91).

A "totality of circumstances" test is used to determine whether a person's freedom of movement was restrained (In re: Manuel G., Cal., 1997). An officer's uncommunicated state of mind and a person's subjective beliefs are irrelevant (In re: Christopher B., DCA, 1990). Examples:

\* Two narcotics officers boarded a bus during a stopover in Fort Lauderdale, Florida. They contacted the defendant who was seated in the back of the bus, asked him for his ticket and identification, and conversed with him while standing and partially blocking the aisle. Defendant consented to a search of his luggage and cocaine was found. U.S. ruled this interaction was a contact and consent was voluntarily given. The officers didn't order, command, or threaten the defendant and they informed him that he had the right to refuse to consent to a search (Florida v. Bostick, U.S., 6/91).

\* Defendant was approached by two Santa Ana Police officers in a "triangulation manner", engaged in conversation about his presence in the area, and asked for identification (which resulted in the plain view observation of contraband). DCA ruled this interaction was not of the type that would cause a reasonable person to feel restrained. The questioning was short in duration, the officers made no accusations of criminal activity, and there were no orders or demands to remain at the scene (Peo. v. Lopez, 4DCA, 7/89).

Subjectively, a person may feel that he or she has to remain at the scene and cooperate with officers. The key issue is what officers objectively say or do to make a reasonable, innocent person feel that he or she is not free to leave?  
Example:

\* A Santa Ana Police officer approached the defendant in an alley known as a drug sales location. He asked, "Hey, how you doing?" "Do you mind if we talk?" Defendant identified himself and told the officer he was visiting a friend in a nearby apartment, but couldn't recall the name of his friend. While the defendant was standing 4-8 feet away, the officer ran a warrant check. The officer testified, "I don't recall having to tell him anything while waiting on the check". "He was just standing right there, not causing me any problems". "There is no reason to give him any instructions". For the next 3-5 minutes, the officer and defendant engaged in "small talk". The check revealed an outstanding warrant and an arrest search recovered tar heroin. DCA ruled the defendant agreed to talk with the officer, the officer "requested" identification, and "inquired" about the defendant's presence in the alley. These actions didn't amount to a seizure. The defendant's movement was not restricted or directed in anyway. Running a warrant check didn't amount to a seizure (Peo. v. Bouser, 4DCA, 7/94).

#### **WHAT CAN BE DONE DURING A CONTACT? - Examples:**

\* Walking up to a pedestrian or vehicle, engaging a person in conversation, asking a person if he or she would mind answering questions, or asking for consent for a search (Florida v. Bostick, U.S., 6/91; U.S. v. Drayton, U.S., 6/02); Making inquiries about a person's presence in an area (Peo. v. Clark, 2DCA, 8/89); "Requesting" identification (examine and return) (I.N.S. v. Delgado, U.S., 1984; Florida v. Royer, U.S., 1983); Spotighting a person or vehicle (Peo. v. Franklin, 5DCA, 6/87; Peo. v. Perez, 6DCA, 7/89); Walking alongside a person and engaging in conversation (Peo. v. Capps, 2DCA, 11/89); Parking behind a car leaving sufficient room for the vehicle to depart and then illuminating the scene with patrol car high beams and both spotlights (Peo. v. Perez, 6DCA, 7/89); Requesting that a person remove his hands from his pockets (Peo. v. Franklin, 5DCA, 6/87); When officers requested to "see some I.D." and waited several minutes while a warrant check was performed (Peo. v. Leath, 2DCA, 6/13); Requesting passengers exit a vehicle (Maryland v. Wilson, U.S., 2/97; Peo. v. Maxwell, 1DCA, 12/88); Requesting a passenger's identification and running a warrants check simultaneously with a DMV check on vehicle registration (Peo. v. Castaneda, 4DCA, 6/95); Approaching a person who had been talking to a known prostitute, asking him if he would be willing to talk for a moment, and asking him if he would wait in the patrol car while the officer "ran him for warrants" (Peo. v. Bennett, 4DCA, 1998); Questioning a witness to a crime (Peo. v. Turner, Cal., 1994); A "walk and talk" in a public and asking for a consent search (U.S. v. Ayon-Meza, 9USCA, 5/99).

"A "knock and talk is a consensual encounter". "Corroboration of an anonymous tip is not necessary before making contact with the homeowner" (Peo. v. Rivera, 4DCA, 2007).

"No heightened level of Fourth Amendment scrutiny arises in this consensual contact .... because it occurred at a home" (Peo. v. Rivera, 4DCA, 2007).

\* Atascadero Police officers were conducting surveillance of a motel room for suspected methamphetamine sales. At 0230 hours, a woman approached the room and was told to leave. Officers feared their surveillance had been compromised, so they knocked at the room door, and then for officer safety purposes stepped aside left and right so they could not be seen. The defendant opened the door and walked outside about 20 feet. He was approached by officers and determined to be under the influence of drugs. An arrest search and a search warrant for the room both yielded drug sales evidence. DCA ruled knocking at a door and not saying anything, even if it is done with the intent of having someone respond or come outside, doesn't rise to the level of unlawful ruse or subterfuge. Officers may "knock and talk" and seek an interview. Officers do not lose this right by momentarily concealing themselves to determine if a person will peacefully answer the door (Peo. v. Colt, 2DCA, 5/04); Anaheim Police officers conducted a noontime "knock and talk" at the defendant's motel room. A consent search resulted in the discovery of methamphetamine. DCA ruled that there is no rule that prohibits officers from knocking on a person's door in the middle of the day and asking for permission to search. Reasonable suspicion is not required for a "knock and talk" (Peo. v. Jenkins, 4DCA, 6/04); "The sanctity of the home is not threatened when police approach a residence, converse with the homeowner, and properly obtain consent to search (Peo. v. Rivera, 4DCA, 10/07); A knock and talk at a sliding glass door facing the street and opening to a ground level deck was permissible. There is no requirement a knock and talk be conducted at the front door when other doors are accessible to the public (Carroll v. Carmen, U.S., 11/14).

**WHAT CAN'T BE DONE DURING A CONTACT?** - The following actions will elevate a contact into an unlawful detention. Examples:

\* Activating a red light causing a person or a vehicle to stop (Peo. v. Bailey, 6DCA, 12/85); Blocking the pathway of a person or vehicle (Peo. v. Wilkens, 6DCA, 6/86); Verbally or physically directing a person's movement ("Hold it, police!" - Peo. v. Verin, 1DCA, 5/90; "Come here, I want to talk to you" - Peo. v. Roth, 4DCA, 3/90; "Police Officer, come here a minute" - Smith v. Ohio, U.S., 6/90); Directing a person to sit on the curb (In re; J.G., 1DCA, 7/14); Ordering or retaining identification (Florida v. Royer, U.S., 1983); Running a warrants check or filling out a field interrogation card while a person waits at the officer's direction (Peo. v. Harness, DCA, 1983); Accusing a person of criminal activity (Wilson v. Superior Court, Cal., 1983); Physically touching a suspect coupled with language

communicating required compliance with the officer's instructions (In re: Manuel G., Cal., 1997); Raising one's hand in a gesture indicating that a person should stop (Peo. v. Bates, 6DCA, 12/13); The "totality" of spotlighting, abrupt parking, "brisk approach", and language used ("I want to confirm your identification") (Peo. v. Garry, 1DCA, 12/07).

\* Where four officers were present at the scene of a street contact with a 15-year old youth, a rifle was handed by one officer to another (albeit a neutral transfer of the weapon to another car), the defendant was asked if he had anything illegal on him, and the defendant was told to sit on the curb, the contact became "increasing intrusive" and the defendant would not reasonably feel that he could leave. Resulting consent to search was not lawfully given (In re: J.G., 1DCA, 11/14).

**11.12 DETENTIONS - A temporary stop for investigation and questioning to determine a person's involvement, if any, in criminal activity.** A detention allows police to investigate criminal activity without first having developed probable cause to arrest. An officer must have **reasonable suspicion** that a person is about to commit a crime, is committing a crime, or has committed a crime and facts connect a person to the suspected criminal activity (Terry v. Ohio, U.S., 1964; Florida v. Royer, U.S., 1983; In re: Tony C., Cal., 1978; In re: Manuel G., Cal., 1997). Police cannot restrain persons at will, based on curiosity, or a hunch.

"A day-old burglary report does not transform a residential neighborhood into a no-man's land in which any passerby is fair game for a roving police interrogation" (In re: Tony C., Cal., 1978).

A detention results in the seizure of a person. If reasonable suspicion is not present, the detention will be unlawful and any evidence or statements resulting from the stop will be suppressed. Example:

\* While conducting a homicide investigation, Orange Police officers stopped a group of known gang members who were described as "socializing". During a 20-minute detention, officers ordered the group to remain at the scene, conducted interviews, and took photographs. DCA ruled there was no reasonable suspicion connecting the detainees with criminal activity and suppressed photo lineup evidence resulting from the detention (Peo. v. Rodriguez, 4DCA, 11/93).

"The reasonable suspicion standard is not a particularly demanding one, but is instead, considerably less proof of wrongdoing by a preponderance of evidence" (Peo. v. Letner and Tobin, Cal., 7/10).

**Detention factors** are used to establish reasonable suspicion. These include: 1) Matching physical description of a wanted subject; 2) Matching description of a wanted vehicle; 3) A person's presence close in time and proximity to a reported crime; 4) A person has a past criminal record related to a reported crime;

5) "Consciousness of guilt " factors such as flight or concealment; 6) High crime area or the criminal reputation of a premises; 7) Time of day or night as it relates to the method of operation of a crime; 8) A person exhibits symptoms of drug or alcohol intoxication; 9) A warrant check "hit" pending "confirmation" of the warrant; 10) An officer's "beat knowledge" combined with experience and training with respect to criminal activity. Examples:

\* Defendants were in a Ford vehicle stopped by a Visalia Police officer. The officer's reasons for the detention were two-fold: First, the stop was made at midnight in the vicinity of multiple car dealerships where recent auto thefts had occurred. The Ford was "beaded with water", as if it had been parked for an extended period of time, and only recently driven a short distance. The last rainstorm was 2-1/2 hours earlier. Second, when the vehicle turned onto a highway, despite there being no other traffic on the roadway, the vehicle traveled at 40 MPH in a 55 MPH zone for a mile, an indicator the driver may be impaired. After the stop, investigation revealed that earlier in the evening the defendant's had committed a murder where the victim had been stabbed to death and sodomized with a beer bottle. Defendants were driving the victim's unreported stolen car. Cal. ruled the detention was lawful. The officer was careful to document the "totality of circumstances" and combined his observations with his training and "beat knowledge". The fact that the defendant's actions may have an "innocent explanation" ("just driving through town at midnight" or "persons tend to slow down when they see an officer") didn't preclude a temporary detention to determine whether criminal activity was afoot. "What is required is not the absence of an innocent explanation, but the existence of specific and articulable facts, which taken together with rational inferences from those facts reasonably warranted that intrusion" (Peo. v. Letner and Tobin, Cal., 7/10).

**"Clerks and attendants who keep these facilities open to the public late at night often do so at considerable risk to their own safety". " They often work solitary shifts in isolated circumstances where their presumed proximity to cash makes them uniquely vulnerable" (U.S. v. Glover, 4USCA, 2011).**

\* At 0440 hours, two Charlotte, North Carolina officers were patrolling near an all-night gas station where prior crimes had occurred. The attendant, who usually stayed in a locked office, was outside near the pumps, kneeling, and checking levels in the fuel tanks. The defendant was standing at the rear corner of the station building and appeared to be watching the attendant. He pulled his head back "as if he were trying to hide". Officers drove to the rear of station. The defendant had left this location and was now standing directly behind the attendant. Officers detained, frisked, and found a gun in the defendant's pant's pocket. USCA ruled reasonable suspicion to detain included: 1) Would-be robbers commit their crimes late at night or early in the morning when it is unlikely they would be observed by a passerby ("The fact these events took place at this late hour only compounds the suspiciousness of Glover's behavior");

span between the observed driving and the call suggested there was little time to fabricate the event. A "false tipster" would think twice before using 9-1-1 because of the available technology to capture, record, and trace call source information. Running another car off the road suggests impairment characteristic of DUI. The officer's failure to observe any additional suspicious driving did not dispel reasonable suspicion of DUI (*Navarette v. California*, U.S., 4/14).

\* At 0143 hours, an anonymous caller phoned the CHP in Kern County reporting "a 80's model blue van", "heading northbound on Hwy. 99 north of Bakersfield at about Airport Dr.", was "weaving all over the roadway". Two to three minutes later, an officer observed a blue van traveling northbound, pulled in behind it, but did not observe any Vehicle Code violations. The officer stopped the car and the defendant was arrested for DUI drugs and possession of heroin. DCA upheld the stop because a caller who reports an erratic, possible drunk driver and describes the vehicle and its location will almost always be someone who witnessed the driving (firsthand knowledge). The caller reported vehicle description, direction of travel and cross street, and there was a close time interval between the report and stop. "An erratic and possible drunk driver poses an imminent threat to public safety and there is a substantial governmental interest in stopping the driver as quickly as possible". The officer's inability to detect any illegal or erratic driving did not negate the legal basis for the stop (*Peo. v. Wells*, Cal., 6/06).

"Investigative activities beyond the original purpose of a traffic stop, including warrant checks, are permissible as long as they do not prolong the stop beyond the time it would otherwise take" (*Peo. v. McGaughran*, Cal., 1979).

**LENGTH OF DETENTION** - An officer may detain a person for as long as is reasonably necessary to accomplish the purpose of the investigation (*U.S. v. Sharpe*, U.S., 3/85). There are no specific time rules. Time is governed by investigative need, investigative justification, and the requirement for officers to pursue investigation in a diligent manner. Examples:

\* Permissible to detain a suspect for an additional 10 minutes to call for the assistance of a more experienced officer to evaluate symptoms of drug use. The additional time was necessary to determine whether the suspect was involved in criminal activity (*Peo. v. Gorak*, 1DCA, 12/87); Permissible to extend a detention 15-20 minutes to obtain a Spanish-speaking interpreter to confirm or dispel suspicions in a narcotic sales case (*Peo. v. Avalos*, 4DCA, 7/96); Permissible to detain a suspected DUI driver in the lobby area of a U.S. Customs checkpoint for nearly an hour awaiting the arrival of the CHP. The delay was unavoidable and necessitated by the need to have the proper agency handle the investigation

(*Peo. v. Forster*, 4DCA, 11/94); A traffic stop may last 10-15 minutes to accomplish the purpose of a Vehicle Code investigation (*Peo. v. McLaughran*, Cal., 1979); 14 minutes was not an unreasonable amount of time for a traffic stop, including running a warrant check, asking questions about past criminal history, and requesting a consent search (*U.S. v. Turvin*, 9USCA, 2008).

\* Defendant was stopped for riding a bicycle at night without a light. The officer conducted a warrants check. While waiting for the return, the defendant consented to a search and a film canister containing methamphetamine was found in his fanny pack. The entire transaction took several minutes. DCA ruled a warrant check during a traffic stop is permissible as long as the information returns within a reasonable time period. The request for a consent search didn't unduly prolong the detention (*Peo. v. Brown*, 5DCA, 3/98); Defendant's vehicle was stopped for a broken taillight. He consented to a search and drugs were found in his car. DCA ruled an officer may ask for consent to search during a traffic infraction stop. The officer's subjective thoughts or intentions on what other criminal activity might be present are irrelevant. Only two minutes had elapsed between initial contact and the request for consent (*Peo. v. Gallardo*, 4DCA, 5/05).

"Mere police questioning does not constitute a seizure". "The expanded questioning need not be supported by separate reasonable suspicion" (*U.S. v. Mendez*, 9USCA, 2007; *Florida v. Bostick*, U.S., 1991; *Ohio v. Robinette*, U.S., 1997).

"An officer's inquiries into matters unrelated to the justification for a traffic stop, this court has made plain, do not convert the encounter into something other than a lawful seizure, as long as the inquiries do not unnecessarily extend the duration of the stop" (*Arizona v. Johnson*, U.S., 2009).

\* Las Vegas Police officers stopped the defendant's vehicle for a registration violation. While a warrants check was being conducted, one officer asked the defendant about gang tattoos on his arms. Defendant admitted to past gang involvement and admitted to spending prison time in Illinois for a weapons violation. The officer asked if there were any weapons in the car. Defendant admitted there was a firearm in the driver's door handle. A search recovered a loaded, semi-automatic pistol. 9USCA ruled questioning about crimes unrelated to the purpose of the traffic stop is lawful as long as questioning doesn't prolong the time beyond that necessary for the initial detention (*U.S. v. Mendez*, 9USCA, 2007).

\* It was not a prolonged detention to walk a drug-sniffing dog around a car during a traffic stop. "We reject the notion that the shift in purpose from a lawful traffic stop into a drug investigation is unlawful because the drug investigation is not supported by any reasonable suspicion" (*Illinois v. Caballes*, U.S., 2005).



\* Officers respond to a domestic violence call. They meet the victim outside her house. She tells officers her husband struck her twice in her face with his closed fist. There is evidence of swelling and discoloration. Once detained, the suspect may be frisked for weapons prior to further investigation because he has exhibited a propensity for violence.

\* Oroville Police stopped the defendant for a vehicle registration violation. A records check revealed he "had a history – felon in possession of a firearm and carrying a concealed weapon, very violent, kick boxer". These records were six years old. The officer conducted a vehicle frisk for officer safety. A loaded handgun was found underneath the driver's seat. After arrest, methamphetamine was found on the defendant's person. DCA ruled it was reasonable for the officer to rely on the information received and conduct a frisk prior to continuing the traffic stop. The information was not unreasonably stale (Peo. v. Bush, 3DCA, 5/01).

\* Officers were patrolling in a high crime area for vehicle burglary and auto tampering. They observed the defendant duck behind a dumpster and attempt to stay out of view. Upon contact, he was nervous, boisterous, angry, antagonistic, "borderline combative". DCA ruled "under such circumstances, they (officers) were not required to await an actual assault before assuring themselves that the detainee was not armed with a lethal weapon" (In: re: Michael S., DCA, 1983).

"An officer making a stop under circumstances of the present case who failed to pat down a suspect for weapons within the limited scope of Terry could be taking substantial and unnecessary risks".  
"The possibility of a surprise attack at close quarters even with a small knife presents danger sufficient to justify an officer taking reasonable protective measures" (U.S. v. Mattarolo, 9USCA, 8/99).

"It is reasonable for an officer to believe that a burglar may be armed with weapons, or tools such as knives or screwdrivers which could be used as weapons" (Peo. v. Miles, DCA, 1975).

### DETENTION FOR PROPERTY CRIMES - Examples:

\* Burglary, Auto Theft, Vehicle Tampering, Vandalism, or Breaking into Coin Operated Machines where tools or instrumentalities are commonly used during the method of operation and could be used to assault an officer. Examples:

\* A screwdriver, pry tool, window punch, pieces of ceramic or porcelain spark plug, pliers, hammer, graffiti etching tools or spray can, etc. These dangerous objects could easily be used as weapons (Peo. v. Osborne, 1DCA, 7/09).

\* At midnight, defendant was observed driving away from a construction site on a secluded county road. He had a three-foot square crate in the back of his truck (the contents were unidentifiable). The deputy knew from previous patrol observations that crated property was stored inside the fenced yard. A traffic stop

was made and the defendant was frisked. The officer felt a knife and small plastic bags containing methamphetamine. 9USCA ruled a frisk was justified in a potential felony property crime investigation. "We see no basis under these circumstances why an experienced officer could and should not temporarily stop the defendant to resolve any possible ambiguity in the defendant's conduct". (U.S. v. Mattarolo, 9USCA, 8/99).

\* Reported prowler, late at night, in a closed business district (Peo. v. Castaneda, DCA, 1995); Defendant was walking in a high crime area for burglary and carrying a television set and tan jacket matching the description of property stolen earlier in the day from a nearby residence (Peo. v. Myles, DCA, 1975); Defendant was reported to be in possession of a paint spray can and graffiti was found on the sidewalk near where he was detained (Peo. v. Lopez, 2DCA, 6/04).

"In the narcotics business, firearms are as much tools of the trade as are most commonly recognized articles of narcotics paraphernalia" (Peo. v. Glaser, Cal., 10/95).

"It should come as no great surprise that those who profit by the illicit manufacture and sale of drugs which so often destroy their customer's lives are not above adopting lethal means to protect their products from seizure and themselves from apprehension" (Peo. v. Osuna, DCA, 1986).

"Rare is the day which passes without fresh reports of drug related homicides, open street warfare between armed gangs over disputed 'drug turf', and police seizures of illicit drug and weapons caches in warranted searches of private residences and other locales" (Peo. v. Thurman, 1DCA, 1989).

### **DETENTION FOR DRUG OR ALCOHOL CRIMES - Examples:**

\* Narcotics sales due to the connection between weapons and the drug subculture (U.S. v. Salas, 9USCA, 6/89; Peo. v. Rosales, 1DCA, 5/89; Peo. v. Glaser, Cal., 10/95); Persons under the influence of drugs because of the potential for violent and irrational behavior (Peo. v. Gorak, 1DCA, 12/87); Narcotic users potentially possessing a syringe, razor blade, glass or ceramic crack pipe, or other sharp paraphernalia that could be used as a weapon (Peo. v. Autry, 4DCA, 6/91; U.S. v. Carrillo, 9USCA, 5/94); Known narcotics sales area where a suspect yelled "rollers" to alert others of police presence then reached suddenly into his pocket (Peo. v. Lee, 1DCA, 1987).

"Officers were engaged in an undertaking fraught with the potential for sudden violence and it would be utter folly to require them to wait to search so as to protect themselves until there is an overt act of hostility" (Peo. v. Samples, 1DCA, 8/96).

\* Defendant was a passenger in a vehicle stopped for having no front license plate. A Los Angeles Sheriff's deputy noted the odor of burning marijuana emitting from the vehicle interior. Defendant was ordered from the car. He was a large man, wore baggy shorts that hung down to his ankles, and an untucked shirt that extended to his mid legs. This baggy clothing prevented the deputy from

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\* While investigating a robbery call, a Walnut Creek Police officer observed a vehicle with expired registration. The officer testified that he "was looking for any Vehicle Code violation so he could stop the car". A search yielded robbery evidence. DCA ruled a reviewing judge must look at the "objective reason for the stop" and treat as irrelevant the officer's subjective investigative motive". Because a CVC violation was present, the detention was lawful (Peo. v. King, 1DCA, 11/94).

\* A Bakersfield Police officer observed a vehicle he recognized as having been involved in drug sales two years prior. He stopped the car for having no front license plate. The officer received consent to search and drugs were found. The officer admitted his chief motivation for stopping the car was to look for drugs. DCA ruled the officer had an objective reason to stop the car because a CVC violation was present (Peo. v. Todd, 5DCA, 11/94).

"American criminals have a long tradition of armed violence, and every year in this country many law enforcement officers are killed in the line of duty, and thousands are wounded" (Terry v. Ohio, U.S., 1968).

"It is not unreasonable to pat the legs when feeling for a concealed weapon". "The officer must feel with sensitive fingers every portion of the prisoner's body". "A thorough search must be made of the ... area about the testicles, and the entire surface of the legs down to the feet" (Terry v. Ohio, U.S., 1968).

"The Fourth Amendment has never been interpreted to require that police officer take unnecessary risks in the performance of their duties" (Pennsylvania v. Mimms, U.S., 1977).

**11.13 FRISKS** - A pat-down or cursory search on the outer surfaces of a person's clothing for the purpose of discovering deadly or dangerous weapons that could be used to assault an officer (Terry v. Ohio, U.S., 1968). A frisk doesn't automatically come "part and parcel" with a detention or when there is a general "perception" of officer safety (Terry v. Ohio, supra; U.S. v. Thomas, 9USCA, 4/88). An officer must show there is a **reasonable and factual belief that the person detained is armed with a deadly or dangerous weapon or potentially violent and assaultive (Terry Standard)**. A frisk is ordinarily justified by the nature of the crime for which a detention is conducted, by activity undertaken by a suspect during a detention, or by information known or discovered about the detainee through official channels (Sibron v. New York, U.S., 1968; Peo. v. Bush, 3DCA, 5/01). Examples:

\* An experienced Cleveland, Ohio robbery detective observed two persons pacing back and forth in front of a jewelry store. These individuals peered into the storefront windows and repeatedly conferred with one another. In the detective's belief, the suspects were "casing" the store for robbery. The subjects were

detained and a pat down located a gun in Terry's pocket. U.S. ruled the activity observed was consistent with the method of operation of "contemplating a daylight robbery". It was reasonable to assume the use of weapons during this type of crime (Terry v. Ohio, U.S., 1968).

**"Officer Trevizo surely was not constitutionally required to give Johnson an opportunity to depart the scene after he exited the vehicle without first ensuring that, in doing so, she was not permitting a dangerous person to get behind her" (Arizona v. Johnson, U.S., 1/09).**

\* Tucson, Arizona Gang Task Force officers stopped a car for a registration violation. The defendant was a passenger in the rear seat. Upon approach, the defendant "looked back and kept his eyes on the officers". The fact he was carrying a police scanner in his pocket was "cause for concern" because it could be an indication he "was going to be involved in some kind of criminal activity" or was "trying to evade the police by listening to the scanner". Defendant told the officer that he lived in a city that was "home to a Crips gang", he was wearing a blue bandana (a common item of gang attire), and he admitted having been released from prison a year prior after serving time for burglary. The officer believed "he might have a weapon on him" and a pat search recovered a handgun in the defendant's waistband. U.S. ruled based upon the observations and the information known, the officer was reasonable in believing a frisk for officer safety was necessary (Arizona v. Johnson, U.S., 1/09).

\* At 0130 hours, a Pomona Police officer contacted the defendant, who was accompanied by a male and female companion, while walking along a "lonely industrial street". The officer decided to frisk the defendant because he was wearing loose clothing that might conceal a weapon, he was hostile during the encounter, and the male companion had a knife sheath attached to his belt. The defendant pulled a handgun and murdered the officer. Cal ruled "a consensual encounter may turn into a lawful detention when an individual's actions give the appearance of potential danger to the officer". The officer was acting in the lawful performance of duty when conducting a frisk (Peo. v. Mendoza, Cal., 2011).

The Terry Standard doesn't apply to frisks of persons on school grounds.  
Example:

\* The special need of schools to maintain a safe and orderly learning environment requires a different search rule. A pat down to determine whether a person is carrying a dangerous weapon is the interest of preventing violence on campus and outweighs any intrusion on the minor's privacy (In re: Jose Y., 2DCA, 7/06 - See 11.4).

"We are mindful that the judiciary should not lightly second guess a police officer's decision to perform a pat down search for officer safety". "The lives and safety of police officers weigh heavily in the balance of competing Fourth Amendment considerations". "However, the Terry rule has been extant for over a quarter of a century and is well known to police". "It is alive and well" (Peo. v. Medina, 2DCA, 7/03).

A routine "officer safety" frisk, without justification why a detainee is armed or assaultive, doesn't meet the Terry Standard (Peo. v. Sandoval, 3DCA, 2008).  
Examples:

\* A San Luis Obispo County Sheriff's deputy contacted the defendant who was seated alone in a parked vehicle, "admiring the view" at night, engine running, on a one lane, rural, dirt county road. No frisk was justified because there were no "Terry" factors present. Evidence found during "plain touch" was suppressed (Peo. v. Dickey, 2DCA, 1/94).

\* LAPD officers stopped the defendant for driving with a broken taillight in a high crime area at night. Due to the time and location of the stop, an officer restrained the defendant's hands and asked, "Do you have any weapons or anything else before I search?" Defendant stated he had rock cocaine in his pocket. He was arrested and the cocaine was recovered. DCA suppressed the evidence and the accompanying statement. Officers can conduct a "Terry frisk" only when there are specific facts that a person is armed or dangerous. A minor traffic offense, combined with the time and location of the stop "are insufficient to cast reasonable suspicion on an individual" (Peo. v. Medina, 2DCA, 7/03).

\* Defendant was under investigation for the theft of packages containing Class II pain medication. He was asked to come to the Postal Inspector's Office for questioning. When he arrived, one inspector conducted a frisk for safety purposes. A decoy package was discovered. 9USCA ruled the frisk was not justified. There were no facts to indicate the defendant was armed or dangerous, he did not act in a threatening manner or make any furtive gestures, and inspectors were unaware of any past record of violent conduct. Stealing U.S. Mail is not a crime commonly associated with weapons, such as robbery or drug dealing (U.S. v. Flatter, 9USCA, 8/06).

\* A frisk wasn't justified because the officer "felt uncomfortable with the defendant's height" (6'6") (Peo. v. Stier, DCA, 2008).

"If refusal of consent were a basis for reasonable suspicion, nothing would be left of Fourth Amendment protections" (In re: H.H., 1DCA, 4/09).

\* An Albany Police officer stopped the defendant for riding a bicycle without proper lighting equipment. He was ordered to step from his bicycle and remove his backpack. Defendant spontaneously stated, "I'm not on probation". This statement made the officer suspicious ("kind of a warning flag as to why

someone would say something like that"). Defendant declined to consent to a search. Concerned that the defendant might be carrying a weapon, the officer conducted a frisk and recovered a loaded revolver from his jacket pocket. DCA ruled the nature of the stop and the refusal to grant consent did not justify a frisk. There was no reason to believe the defendant was armed or dangerous. An assertion of one's Fourth Amendment rights doesn't create reasonable suspicion for a frisk (In re: H.H., 1DCA, 4/09).

**"Terry and its progeny require some degree of particularized suspicion beyond gang membership alone" (Peo. v. Mendez, 9USCA, 10/06).**

\* During a Vehicle Code stop, suspicion of gang membership or affiliation, unrelated to contemporaneous or observed criminal activity or past criminal record is insufficient to conduct a frisk. "The tendency of members of a gang to carry weapons does not lead to any inference as to whether a gang member is armed on a particular occasion" (Peo. v. Mendez, 9USCA, 10/06).

\* A frisk for identification is not permitted. Identification cannot be used as a weapon (Peo. v. Garcia, 2DCA, 12/06).

**FRISK "RULES OF ENGAGEMENT"** - An officer may retrieve a "hard object" that feels like a deadly or dangerous weapon for further inspection. "Soft bulges" that don't feel like a weapon must be seized with another search basis (incident to arrest, "plain touch", or with consent). A consent frisk may be sought during a contact or detention for a traffic offense or nonviolent crime. Consent must be voluntary and obtained in a "request-choice" manner (See 11.21). Example:

\* A solo deputy contacts a pedestrian walking in a commercial area on her beat. She asks the person if he is carrying any "guns or knives". The person replies, "No". The deputy asks, "For my safety, do you mind if I give you a quick check for weapons?" ("request-choice" language). The person gives an affirmative nod and doesn't object when the deputy approaches and begins to frisk. A concealed knife capable of stabbing is recovered. The frisk is justified based upon implied consent (See 11.21); A Fresno Police officer contacted a suspected gang member outside a nightclub. The officer asked for consent to search for weapons. Defendant immediately "placed his hands on his head" in a pre-custody/handcuffing manner. This gesture constituted implied consent to frisk (Peo. v. Vongxay, 9USCA, 2/10).

Under some circumstances, officers may open containers associated with the person during a frisk transaction. Examples:

\* A search for a weapon inside a backpack was upheld. Due to the resilient construction of the fabric and number of items inside, the backpack could not be readily "patted" from the exterior. A similar analysis can be made to a purse or handbag (Peo. v. Brisendine, Cal., 1975); A San Bernardino Sheriff's deputy responded to a disturbance call where the defendant "had threatened another". Defendant was wearing a fanny pack. Through the fabric "a vertical outline and a horizontal outline which gave the impression of an "L" shape, which is generally the shape of a handgun, being the grip, the frame, and the slide" could be seen. The deputy ordered the defendant to remove the fanny pack and inspected inside. A gun was found. DCA ruled the "threat nature" of the call and the officer's observation of the outline of a possible gun provided reason to open the pack for inspection (Peo. v. Ritter, 4DCA, 4/97); OK to widen the opening of a pocket or pull out the pocket lining in order to retrieve a hard object. "The police are not required to grab blindly after a frisk reveals a possible weapon (Peo. v. Limon, DCA, 1993).

### **WHEN IS A FRISK JUSTIFIED?**

#### **DETENTION FOR WEAPONS-RELATED OFFENSES** - Examples:

\* Assault with a Deadly Weapon, Robbery, Brandishing a Weapon, Carrying a Concealed Weapon, or Deadly Weapons Control Law violations.

\* Circumstances pointing towards possible possession of or access to a weapon. Examples:

\* A large bulge which "hung heavy" in a jacket pocket and "swung freely when a person turned to walk away" (Peo. v. Miles, 1DCA, 11/87); When a person started to reach towards a large bulge in his waistband (Peo. v. Rosales, DCA, 1989); During a nighttime detention of a suspect with gang affiliation who kept putting his hands into his pockets after being told to remove them (In Re: Frank V., 4DCA, 8/91); A driver reaching under the car seat and the sound of "metal hitting metal" was heard (Peo. v. King, 4DCA, 12/89); A past record for carrying weapons and assaultive conduct (Aureguy v. City of Tiburon, USDC No. Cal. Dist., 6/93; Peo. v. Bush, 3DCA, 5/01); When a vehicle was driving slowly in a high crime area with the lights off and after a traffic stop the driver reached towards his sock (Peo. v. Barnes, DCA, 1983); When a traffic stop was made for suspected DUI, the driver had prior record for robbery, was wearing a bulky jacket, and kept putting his hands into his pockets (Peo. v. Autry, DCA, 1991); Where a vehicle initially failed to yield, the defendant (passenger) bent over suspiciously in his seat, was evasive and deceptive as why he bent over, and made a sudden movement towards his jacket pocket (U.S. v. Burkhart, 9USCA, 2010); While seated in a car, the defendant reached into his waistband (U.S. v. Price, D.C. Circuit, 2005); An officer noticed a driver lean to the right as if to

conceal something (Haynie v. County of Los Angeles, 9USCA, 2003); When the suspect “clutched his stomach as he got out of the car, as if he were trying to hold something against the front part of his body” (U.S. v. Raymond, 4USCA, 1998); When the defendant angled his body away from officers to prevent a good look at his midsection, then “leaned his upper body with his right arm pressed against his stomach as if he was hiding something” (Peo. v. Rios, 5DCA, 4/11); When an officer making a traffic stop saw Davis (a passenger) rise off the seat and place his hand behind his back as if he were placing something underneath or behind him (U.S. v. Davis, 8USCA, 2006); After a traffic stop, the passengers repeatedly moved back and forth and leaned over as to discard something (U.S. v. Hunnicutt, 10USCA, 1998).

**“The officer need not be absolutely certain that an individual is armed; the crux of the issue is whether a reasonably prudent person in the totality of circumstances would be warranted in the belief that his or her safety was in danger”. “Viewed objectively, through the lens of common sense and experience, H.M.’s odd behavior strongly suggested criminal activity was afoot” (Peo. v. H.M., 2DCA, 9/08).**

\* Los Angeles Police Gang Unit officers were patrolling in a “gang stronghold” area where the day prior a shooting had occurred. They observed the defendant, a known member of the 18th Street gang, “sprinting” in their direction through heavy traffic on a busy street causing motorists to slow and honk. The defendant appeared confused, was sweating profusely, and kept “looking back over his shoulder”. His demeanor suggested that he was “trying to get away from something”. Defendant was detained for a CVC infraction and to investigate if additional criminal activity had taken place. The officer testified, “I was unsure if he had robbed someone or he had been a victim”. “Just knowing the area, prior experience, having worked that area, demeanor, his actions”, if some type of crime had taken place, I thought that a weapon had been used”. Defendant was frisked and a loaded .25 automatic found in his pocket. DCA ruled the frisk was justified. The area of the stop, the defendant’s gang affiliation, the propensity of gang members to carry weapons, “running really fast” though traffic, and the defendant’s demeanor and repeated glances behind him as he ran, all suggested the defendant was fleeing from a dangerous situation (Peo. v. H.M., 2DCA, 9/08).

The court noted “in its experience in reviewing hundreds upon hundreds of criminal cases, felons convicted of firearms offenses often are recidivists and continue to carry weapons after their initial offenses”. “Also, persons with violent tendencies do not always reform” (Peo. v. Bush, 3DCA, 5/01).

### **DETENTION FOR VIOLENCE-RELATED OFFENSES – Examples:**

\*Assault, Battery, Aggravated Battery, Occupational Battery, Cohabitation Abuse, Stalking, or Fighting in Public.





# Petaluma Police Department BRIEFING TRAINING RECORD

TM

EMPLOYEES					
Name	ID#	Name	ID#	Name	ID#

TRAINING SUMMARY			
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Date of Training 1/9/2020	Length of Training HRS:      MIN: 25	Time of Training START: <b>1605</b> END: <b>1630</b>	Location <input checked="" type="checkbox"/> Main Station <input type="checkbox"/> Other: _____
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Type of Training

Video   
  Lecture   
  Practical Demonstration   
  Discussion   
  Other: \_\_\_\_\_

**ATTACH TRAINING MATERIALS.** PowerPoint, case law, etc. Exclude department policies.

**TRAINING TOPIC(S): General Description of Training**

- EXAMPLE
- Use of Force: PPD Policy 300 – Discussion / Handouts
  - Search & Seizure: Vehicle searches, Arizona v Gant – Discussion / PowerPoint

Custodial Searches: Policy 902

Missing Persons: Policy 332

Vehicle Searches / Arizona V. Gant: Handout attached

Hate Crimes: Policy 338

Graham V. Connor

Trainers: Sawyer, Sutherland, Gutierrez, Joerger, Debaeke.

Supervisory Review			
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Trainer Sawyer	ID# 3108	Supervisor Sawyer	ID# 3108
Lieutenant <i>[Signature]</i>	ID# 1354	Date 1/10/20	

ARIZONA V GANT

**11.16 VEHICLE SEARCH (INCIDENT TO ARREST)** - After the custodial arrest of a driver, passenger, or a person who is immediately associated with a vehicle, the passenger compartment and its contents may be searched for weapons or "FICE" (New York v. Belton, U.S., 1981; Arizona v. Gant, U.S., 4/09). There are four requirements for an arrest search in a vehicle:

1) Custody and transportation of a person who was inside or "closely associated" with the vehicle. Examples:

\* When a passenger is arrested (Peo. v. Hunt, 3DCA, 11/90); When the driver was standing at the rear of the car drinking a beer (Peo. v. Stoffle, 3DCA, 12/91); When the defendant was standing next to his open car door in the parking lot of a grocery store (U.S. v. Osife, 9USCA, 2/05).

\* An Iowa officer stopped the defendant for speeding. Iowa law allowed the officer to cite the violator or make a custodial arrest. The officer issued a citation, searched the defendant's car, and found marijuana. U.S. ruled an arrest search was not permitted for issuance of a citation. "No further evidence of excessive speed was going to be found in the passenger compartment of the car" (Knowles v. Iowa, U.S., 12/98).

"We hold that Belton does not authorize a vehicle search incident to a recent occupant's arrest after the arrestee had been secured and cannot access the interior of the vehicle" (Gant v. Arizona, U.S., 4/09).

2) When there is reasonable suspicion to believe evidence associated with the arrest will be found in the passenger area. Examples:

\* A Norfolk, Virginia officer investigated a vehicle because the license plates didn't match the vehicle model (Lincoln town car plate on a Chevrolet 2-door). The defendant consented to a search. The officer retrieved three bags of marijuana and a large amount of rock cocaine. Defendant was arrested and placed in the patrol unit. The officer searched the passenger area and found a 9 mm pistol under the driver's seat. U.S. ruled the search was reasonable because the officer believed there could be more illegal drugs related to the arrest in the passenger area (Thornton v. U.S., U.S., 5/04).

\* Defendant was stopped for speeding. The officer smelled the fresh odor of beer emitting from vehicle. The officer searched the passenger compartment for open alcohol containers. An open beer can was located, along with several knives, and a billy club. In pockets sewn into the seat cover, a gun magazine was found. Eventually a loaded .380 auto was found in a duffel bag and cocaine and methamphetamine packaged for sale in a toiletry bag. DCA ruled because of the fresh odor of alcohol, a probable cause search for open containers was justified.

Once the knives were located, a protective frisk for more weapons was justified. Once the officer found the billy club, the entire passenger area could be searched for more weapons as incident to arrest resulting in the discovery of the additional evidence (Peo. v. Molina, 1DCA, 6/94).

**"Illegal possession of a firearm is more akin to illegal possession of illegal drugs, which would provide such reasonable belief"** (Peo. v. Osborne, 1DCA, 7/09).

\* Antioch Police officers detained the defendant for auto burglary. A frisk located a loaded 9mm in his pocket. A search of the passenger compartment of his car revealed drugs inside a backpack. DCA ruled the passenger area search was reasonable. Though the defendant was outside the car and handcuffed, it was "reasonable to believe evidence relevant to arrest might be found in the vehicle" (additional firearms, ammunition) (Peo. v. Osborne, 1DCA, 7/09).

\* A Santa Cruz County deputy stopped the defendant's vehicle for speeding (90 MPH in a 65 MPH zone). Defendant was arrested for driving under the influence of drugs. A search under the driver's seat recovered a loaded Glock .50 handgun and "tooters" for snorting drugs. DCA ruled the nature of the arrest offense (DUI) "supplied a reasonable basis for believing that evidence relevant to that type of offense might be in the vehicle". "The deputies had unqualified authority under Gant to search the passenger compartment of the vehicle and any container found therein" (Peo. v. Nottoli, 6DCA, 10/11).

In some cases, the reasonable suspicion standard was not justified. Examples:

\* While conducting a drug investigation, Tucson, Arizona officers observed the defendant drive into his driveway. Officers had prior knowledge he had a suspended driver's license and an outstanding arrest warrant for this violation. Officers met the defendant 10-12 feet from his car. He was arrested, handcuffed, and placed in the back of a patrol unit. Officers returned to the car, searched, and found a handgun and a bag of cocaine. U.S. ruled the search was unlawful. The arrest offense was not one commonly associated with evidence or contraband (Gant v. Arizona, U.S., 4/09).

\* Los Angeles Police Gang Enforcement officers stopped the defendant's vehicle for failing to signal a turn. Defendant refused to exit the car, locked himself inside, repeatedly questioned why he was being stopped, and insisted on talking with a police supervisor. After ten minutes, officers broke a window, "tased" the defendant, and arrested him for 148 P.C. - Resisting and Obstructing. A search of the passenger area located empty baggies and cash in the center console and rock cocaine hidden in an air vent. DCA ruled the nature of this

arrest did not give rise to any reasonable suspicion that more evidence would be found in the passenger area. Allowing officers to look for "motive evidence" as to why the defendant "resisted officers" was overbroad. "Impeding an officer's investigation is unlikely to leave evidentiary traces, such as fruits or instrumentalities of a crime, in a vehicle" (Peo. v. Evans, 2DCA, 11/11).

\* A Washington State trooper arrested the defendant for driving with a suspended license. The trooper returned to the defendant's truck, searched, and found methamphetamine and a handgun. The evidence was suppressed because there was no reason to believe any evidence related to the custody offense would be found inside the truck (U.S. v. Maddox, 9USCA, 4/10).

Note: One part of the Arizona v. Gant decision states a passenger area search can be conducted when an arrestee is unsecured (not handcuffed or placed in a police car) and within reaching distance of the passenger compartment at the time of the search. This procedure presents obvious officer safety concerns and is highly discouraged. An officer would be careless to turn his or her back to an unsecured suspect and conduct a passenger area search. Safety always trumps finding evidence!

With traditional "non-FICE" arrests (i.e. driving with a suspended driver's license, reckless driving, warrant arrest, disturbing the peace, battery, trespassing, etc.), officers should always perform a full personal search of the arrestee prior to transportation to the station or jail (See 11.14). Additional evidence or contraband found on the arrestee's person, the smell of alcohol on the driver's breath, symptoms of drug influence, etc. would provide the "reasonable suspicion" to conduct a passenger area search. On "non-FICE" arrests, always consider asking for a consent search ("Sir, is there anything against the law in your vehicle tonight?" "Do I have your permission to take a look?") (See 11.21). Finally, when there is a "caretaking purpose" for impounding the vehicle, an "administratively-driven" inventory search may be conducted. Evidence found "fortuitously" is admissible (See 11.18).

When an arrest search is justified, containers inside the passenger area belonging to other passengers can be opened (Peo. v. Mitchell, 1DCA, 7/95; Peo. v. Prance, 1DCA, 1/91).

"Articles inside the relatively narrow compass of the passenger compartment are in fact generally, if not inevitably, within the area into which an arrestee might reach to grab a weapon or evidentiary item, albeit with some difficulty in some instances". "The ability to search should not be clouded by the interposition of a cover" (U.S. v. Mayo, 9USCA, 1/05).

3) The passenger area includes any compartment or container accessible from inside the car. Example:

### **11.17 VEHICLE SEARCH - PROBABLE CAUSE (AUTOMOBILE EXCEPTION TO THE SEARCH WARRANT REQUIREMENT) -**

**When there is probable cause to believe evidence or contraband is inside a vehicle that is mobile or readily accessible to the roadway, the vehicle, its compartments, contents, and containers can be searched without a search warrant (Ross Rule) (U.S. v. Ross, U.S., 1982; California v. Acevedo, U.S., 1991; Peo. v. Valdez, Cal., 1982).** A vehicle has a reduced expectation of privacy because it is mobile, in public view, and subject to a wide range of governmental regulation not applicable to dwellings. Examples:

\* During the alcohol prohibition era, federal agents saw two men leaving a house where "booze was sold" in an Oldsmobile roadster. Agents believed the men were engaged in the transportation of liquor. They stopped and searched the car, finding 68 quarts of bonded whiskey and gin. U.S. established the "Automobile Exception" precedent wherein search warrants were not required for mobile vehicles (U.S. v. Carroll, U.S., 1925).

\* The warrantless search of an apparently operable vehicle parked in a driveway was lawful even though the car didn't actually run. There was nothing about the car (up on blocks, engine setting outside, flat tires) that would indicate the vehicle wasn't readily mobile (U.S. v. Hatley, 9USCA, 7/93).

\* A Bureau of Narcotics Enforcement agent observed the defendant selling drugs during the Sierra Nevada World Music Festival in Mendocino County. Defendant was arrested and capsules containing MDMA, baggies containing psilocybin mushrooms, and cocaine were recovered from his backpack. Also recovered were car keys and a Hertz rental agreement for a Hummer. The Hummer was parked in an area set aside for camping. Defendant had pitched a tent-like structure that enveloped the vehicle. Inside this makeshift structure were several smaller tents and a kitchen/dining area. All but the left front bumper was enclosed by a large tarp, attached with "zip ties" to a 10' X 30' aluminum A-frame and to the mirrors, grill, and other points on the vehicle. There was an untied flap that served as the entrance / exit. Agents entered and searched the Hummer, recovering more MDMA capsules, marijuana, several pounds of mushrooms, and a quarter pound of cocaine. DCA ruled the search was unlawful. The nature of the enclosure around the vehicle was equivalent to a large camping tent located in a public campground. "Whether of short or long term duration, one's occupation of a tent is entitled to the same protection from unreasonable governmental intrusion as that afforded to homes or hotel rooms". The Hummer was not readily mobile for the purposes of the "Auto Exception" (Peo. v. Hughson, 1DCA, 12/08).

"During virtually the entire history of our country - whether contraband was transported in a horse drawn carriage, a 1921 roadster, or in a modern automobile - it has been assumed that a lawful search of a vehicle would include a search of any container that might conceal the object of the search" (U.S. v. Ross, U.S., 1982).

"As well, effective law enforcement would be appreciably impaired without the ability to search a passenger's belongings when there is reason to believe contraband or evidence of criminal wrongdoing is hidden in the car" (Wyoming v. Houghton, U.S., 4/99).

\* After a traffic stop for speeding, a Wyoming Highway Patrol officer noticed a syringe in the driver's pocket. The driver admitted the paraphernalia was for drug use. The officer searched the interior of the car looking for drugs and found methamphetamine and a syringe inside the defendant's (passenger) purse. U.S. ruled the officer had probable cause to believe there were illegal drugs somewhere in the car. All containers may be searched, without qualification as to ownership. "A passenger may have an interest in concealing evidence of wrongdoing in common enterprise with the driver and a driver or vehicle owner might be able to hide contraband in a passenger's belongings as readily as in other containers in a vehicle" (Wyoming v. Houghton, U.S., 4/99).

"Probable cause requires a reasonable belief evaluated in light of the officer's experience and the practical considerations of everyday life that the contraband or evidence will be found in the place searched" (U.S. v. George, 9USCA, 1989).

**PROBABLE CAUSE** - An officer must point to specific facts which lead him or her to believe there is a "fair probability" that evidence or contraband is someplace inside the car. A probable cause search can be performed with or without a custodial arrest. Examples:

\* Defendant and a female companion entered an open house for sale pretending they were interested in buying the property. They stole the realtor's wallet and purse. Based upon an APB, an officer stopped the car. The stolen property was located between the seats. DCA ruled the officer had probable cause to search the vehicle because: 1) A crime had recently occurred in the geographic vicinity (three miles away); 2) Matching suspect's description (age, gender, race, stature, and clothing); 3) Matching vehicle description (red Ford F-150 pickup with chrome rims); and 4) During field interview, the female companion acknowledged she had been to an open house. There was a "fair probability" the stolen property would be found in the truck (Peo. v. Little, 4DCA, 6/12).

\* Two confidential informants told Los Angeles Sheriffs deputies the defendant was selling cocaine. Defendant was detained and arrested for carrying a concealed firearm. An arrest search located a car key. Deputies unlocked the

trunk and found nine pounds of cocaine. DCA ruled there was probable cause to search the car due to the informant's information, finding a gun (commonly associated with drug offenses), and false statements about vehicle ownership (Peo. v. Carrillo, 2DCA, 8/95).

"Illegal possession of a firearm is more akin to illegal possession of drugs" (Peo. v. Osborne, 1DCA, 7/09).

Observation or finding instrumentalities or contraband on an arrested person or inside a vehicle will provide probable cause to search for more of the same ("Where there is smoke, there is fire". Examples:

\* Finding a loaded shotgun and handgun in the passenger area (Peo. v. Benites, DCA, 1982); Possession of a firearm (Peo. v. Osborne, 1DCA, 7/09; Peo. v. Nicholson, DCA, 1989); Possession of an open tequila bottle behind the driver's seat (Peo. v. Sousa, 6DCA, 5/93); Finding two rocks of cocaine (Peo. v. Hunt, DCA, 1990); The odor of burnt marijuana and observing a pipe with burned residue in the bowl (Peo. v. Waxler, 1DCA, 3/14); The plain view observation of a bag of marijuana in an open side panel and white powder appearing to be cocaine on the driver and passenger seats (U.S. v. Fowlkes, 9USCA, 8/14).

Probable cause to search a vehicle doesn't include a body search of the driver or a passenger (U.S. v. DiRe, U.S., 1948; Ybarra v. Illinois, U.S., 1979). Persons must be searched based upon a separate basis (incident to arrest, consent, probation or parole). Example:

\* A Madera County Sheriff's deputy stopped a van for an equipment infraction. The deputy smelled the odor of marijuana emitting from the vehicle interior. Believing that the defendant possessed drugs on his person, a search was conducted and drugs were found. DCA suppressed the evidence. Though probable cause may have existed to search the van, the personal search took place before the vehicle search. An "Auto Exception" search doesn't extend to the pockets of people (Peo. v. Temple, 5DCA, 7/95).

### **AUTO EXCEPTION - "RULES OF ENGAGEMENT"**

1) **Scope** applies to a probable cause search. Examples:

\* A citizen reports that she observed a suspect enter her neighbor's garage and take two chain saws. The suspect left in a described van. The van is stopped. The officer would be limited in searching only in areas where chain saws could be located. A search of the glove compartment, purse, cigar box, or toolbox would be beyond scope; An officer observes an open bottle of tequila between the seats of a Corvette. Her initial scope of search would be to locate more alcohol containers in the passenger area. This would not include looking inside a

night (indicative of airing out the premises) provided probable cause to search the defendant's vehicle parked in an attached carport. The victim's dismembered body parts were found inside. The vehicle was parked in a public place and readily mobile (Peo. v. Hockstaser, 4DCA, 10/09).

3) **Delayed Probable Cause Searches** - A probable cause search doesn't need to be contemporaneous. A search can be delayed to another time and location. Probable cause to search the car does not expire once a car is taken into police custody. Examples:

\* A delayed search for coins stolen from parking meters though separated several hours in time and location from the driver's arrest (Peo. v. Superior Court (Overland), 2DCA, 8/88); Eight hours later for sexual battery evidence (Michigan v. Thomas, U.S., 1982); Three days later for "bricks" of marijuana (U.S. v. Johns, U.S., 1985); Seven days later for methamphetamine hidden inside a false battery in the defendant's truck (U.S. v. Spires, U.S.D.C. (Cent. Dist. Cal.), 11/91).

"The alert of a well trained, narcotics detection dog is sufficient to provide probable cause to search the trunk of a vehicle" (Illinois v. Caballes, U.S., 1/05).

\* During a search, a 9mm pistol, methamphetamine, and marijuana were found in the passenger area of a vehicle. "Bear", a drug detection dog, alerted on the trunk. Because of the number of items inside the trunk, the vehicle was taken to Nevada Highway Patrol headquarters in order to conduct a more thorough search. A large quantity of methamphetamine was found. 9USCA ruled the search that could have taken place at the scene could be duplicated later at the police station. Justification to search a car doesn't evaporate once a car has been immobilized (U.S. v. Garcia, 9USCA, 3/00).

4) **Trunks and Nexus** - A trunk search requires **nexus** (a legal connection). Even after a custodial arrest, crimes that do not have evidence or contraband commonly associated with their corpus delicti will not support a trunk search (arrest warrants, driving with a suspended license, trespassing, disturbing the peace, battery, cohabitation abuse, etc.). Nexus is established in one of two ways: 1) "FICE" found on an arrestee's person or in the passenger area leads to probable cause to believe more "FICE" will be found in the trunk (i.e. "where there is smoke, there is fire"); or 2) Due to the nature of the crime under investigation, there is probable cause to believe "FICE" is somewhere inside the vehicle. The evidence is not located in the passenger area, so logically (and by process of elimination), the evidence could be in the trunk. Examples:

\* A tested informant told officers drugs were being transported in the trunk of a car. This information provided the probable cause to search the trunk. Observing a bullet on the front seat provided probable cause to search the passenger area (U.S. v. Ross, U.S., 1982); A citizen reports a window smash burglary at a home





# Petaluma Police Department BRIEFING TRAINING RECORD

TMS

EMPLOYEES							
Name	ID#	Name	ID#	Name	ID#	Name	ID#

### TRAINING SUMMARY

Date of Training <b>1/10/20</b>	Length of Training HRS:      MIN: <b>30</b>	Time of Training START: <b>0900</b> END: <b>0930</b>	Location <input checked="" type="checkbox"/> Main Station <input type="checkbox"/> Other: _____
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Type of Training  
 Video     Lecture     Practical Demonstration     Discussion     Other: Policy Reading

**ATTACH TRAINING MATERIALS.** PowerPoint, case law, etc. Exclude department policies.

**TRAINING TOPIC(S): General Description of Training**

EXAMPLE • Use of Force: PPD Policy 300 – Discussion / Handouts  
 • Search & Seizure: Vehicle searches, Arizona v Gant – Discussion / PowerPoint

<sup>Bias</sup>  
 Policy 402 ~~Bias~~ Based Policing-Discussion and Policy Review

Policy 428 Immigration Violations-Discussion and Policy Review

### Supervisory Review

Trainer <b>A. Wirtz</b>	ID# <b>2932</b>	Supervisor <b>GARIHAN</b>	ID# <b>1757</b>
Lieutenant <b>Lyons</b>	ID# <b>1354</b>	Date <b>1/10/20</b>	



# Petaluma Police Department BRIEFING TRAINING RECORD

TMS

EMPLOYEES					
Name	ID#	Name	ID#	Name	ID#

### TRAINING SUMMARY

Date of Training 11/21/2019	Length of Training HRS:          MIN: 30	Time of Training START: <b>0715</b> END: <b>0745</b>	Location <input checked="" type="checkbox"/> Main Station <input type="checkbox"/> Other: _____
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Type of Training

Video   
  Lecture   
  Practical Demonstration   
  Discussion   
  Other: \_\_\_\_\_

**ATTACH TRAINING MATERIALS.** PowerPoint, case law, etc. Exclude department policies.

**TRAINING TOPIC(S): General Description of Training**

*EXAMPLE*

- Use of Force: PPD Policy 300 – Discussion / Handouts
- Search & Seizure: Vehicle searches, Arizona v Gant – Discussion / PowerPoint

Jail Polcy    PPD Policy 900-Lecture and discussion

### Supervisory Review

Trainer Hawkins	ID# 2173	Supervisor Garihan	ID# 1757
Lieutenant Lyons	ID# 1359	Date 12/20/2019	



# Petaling Police Department BRIEFING TRAINING RECORD

TMS

EMPLOYEES					
Name	ID#	Name	ID#	Name	ID#

TRAINING SUMMARY			
Date of Training 11/15/2019	Length of Training HRS:            MIN: 30	Time of Training START: <b>0715</b> END: <b>0745</b>	Location <input checked="" type="checkbox"/> Main Station <input type="checkbox"/> Other: _____
Type of Training <input type="checkbox"/> Video <input checked="" type="checkbox"/> Lecture <input type="checkbox"/> Practical Demonstration <input type="checkbox"/> Discussion <input type="checkbox"/> Other: _____			

**ATTACH TRAINING MATERIALS.** PowerPoint, case law, etc. Exclude department policies.

**TRAINING TOPIC(S): General Description of Training**

- EXAMPLE*
- Use of Force: PPD Policy 300 – Discussion / Handouts
  - Search & Seizure: Vehicle searches, Arizona v Gant – Discussion / PowerPoint

Missing Persons    PPD Policy 332-Lecture and discussion

Supervisory Review			
Trainer Hawkins	ID# 2173	Supervisor Garihan	ID# 1757
Lieutenant Lyons	ID# 1359	Date 12/20/2019	

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# Petaluma Police Department BRIEFING TRAINING RECORD

TMS

## EMPLOYEES

Name	ID#	Name	ID#	Name	ID#	Name	ID#

## TRAINING SUMMARY

Date of Training 1/2/2020	Length of Training HRS: MIN: 45	Time of Training START: 0200 END: 0245	Location <input checked="" type="checkbox"/> Main Station <input type="checkbox"/> Other: _____
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Type of Training  
 Video  Lecture  Practical Demonstration  Discussion  Other: \_\_\_\_\_

**ATTACH TRAINING MATERIALS.** PowerPoint, case law, etc. Exclude department policies.  
**TRAINING TOPIC(S): General Description of Training**  
*EXAMPLE* • Use of Force: PPD Policy 300 – Discussion / Handouts  
 • Search & Seizure: Vehicle searches, Arizona v Gant – Discussion / PowerPoint

Search and Seizure, Custody Searches: Policy 322/902  
 Use of Force: Policy 300  
 Temporary Custody of Adults: Policy 900  
 Immigration Violations: Policy 425  
 Bias-Based Policing: Policy 402

## Supervisory Review

Trainer Sawyer / Gutierrez	ID# 3108/3188	Supervisor Cox	ID# 1770
Lieutenant Lyons	ID# 1359	Date	





# Petaluma Police Department BRIEFING TRAINING RECORD

TMS

EMPLOYEES							
Name	ID#	Name	ID#	Name	ID#	Name	ID#
TRAINING SUMMARY							
Date of Training 1/10/20	Length of Training HRS:      MIN: 30	Time of Training START: <b>0730</b> END: <b>0800</b>		Location <input checked="" type="checkbox"/> Main Station <input type="checkbox"/> Other: _____			
Type of Training <input type="checkbox"/> Video <input checked="" type="checkbox"/> Lecture <input type="checkbox"/> Practical Demonstration <input checked="" type="checkbox"/> Discussion <input checked="" type="checkbox"/> Other: <u>Policy Reading</u>							
<p><b>ATTACH TRAINING MATERIALS.</b> PowerPoint, case law, etc. Exclude department policies.</p> <p><b>TRAINING TOPIC(S): General Description of Training</b></p> <p>EXAMPLE</p> <ul style="list-style-type: none"> <li>• <u>Use of Force</u>: PPD Policy 300 – Discussion / Handouts</li> <li>• <u>Search &amp; Seizure</u>: Vehicle searches, Arizona v Gant – Discussion / PowerPoint</li> </ul> <p>Policy 322: Search and Seizure</p> <p>Policy 328: Custodial Searches</p>							
Supervisory Review							
Trainer N. Camilleri		ID# 3383	Supervisor GARIHAN		ID# 1757		
Lieutenant <i>Wors</i>		ID# 1359	Date 1/10/20				



# Petaluma Police Department BRIEFING TRAINING RECORD

TMS

## EMPLOYEES

Name	ID#	Name	ID#	Name	ID#

## TRAINING SUMMARY

Date of Training 1/10/20	Length of Training HRS:      MIN: 30	Time of Training START: 0700 END: 0730	Location <input checked="" type="checkbox"/> Main Station <input type="checkbox"/> Other: _____
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Type of Training  
 Video    Lecture    Practical Demonstration    Discussion    Other: Policy Reading

**ATTACH TRAINING MATERIALS.** PowerPoint, case law, etc. Exclude department policies.  
**TRAINING TOPIC(S): General Description of Training**  
*EXAMPLE* • Use of Force: PPD Policy 300 – Discussion / Handouts  
 • Search & Seizure: Vehicle searches, Arizona v Gant – Discussion / PowerPoint

Policy 338 Hate Crimes  
 Policy 328 Discriminatory Harassment

## Supervisory Review

Trainer D.Hutchinson	ID# 2641	Supervisor GARIMAN	ID# 1757
Lieutenant Myers	ID# 1359	Date 1/10/20	