

Field Guide & Legal Roadmap for Ohio



Law Enforcement Officers

Edited by: Officer Richard Neil ~ Retired

This booklet is only meant to serve as a reference guide for law enforcement officers to use in their daily duties. It should not be used for legal advice. You should consult your city attorney or county prosecutor for any legal questions you have. Officers should also consult their supervisors and department policy in all necessary instances.

The references in this booklet include decisions from the U.S. Supreme Court, the Ohio Supreme Court, the Sixth Circuit Court of Appeals, as well as other lower courts. There are statutes referenced from the Ohio Revised Code and information from the FLETC (Federal Law Enforcement Training Center) and other government resources.

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The 4th Amendment

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

The Fourth Amendment contains two distinct clauses. The first requires that all searches and seizures be reasonable, while the second mandates that probable cause exist before search or arrest warrants may be issued, and that warrants particularly describe the place(s) to be searched and person(s) or thing(s) to be seized.

The Fourth Amendment applies to governmental searches and seizures, but not those done by private citizens or organizations who are not acting on behalf of a government. The Fourth Amendment does not regulate private conduct, regardless of whether that conduct is reasonable or unreasonable. Evidence of a crime that is obtained through a private search may be admissible against a defendant, even if the private search was conducted illegally.

A person is seized within the meaning of the Fourth Amendment only when by means of physical force or show of authority his freedom of movement is restrained, and in the circumstances surrounding the incident, a reasonable person would believe that he was not free to leave.

As long as the police do not convey a message that compliance with their requests is required, the courts will usually consider the police contact to be a "citizen encounter" which falls outside the protections

of the Fourth Amendment.

If a person remains free to disregard questioning by the government, there has been no intrusion upon the person's liberty or privacy under the Fourth Amendment — there has been no seizure.

The government **may not** detain an individual even momentarily without reasonable and articulable suspicion, with a few checkpoint exceptions.

4th Amendment “Search”

The Fourth Amendment prohibits unreasonable “searches” and unreasonable “seizures.”

Reasonable Expectation of Privacy (REP)

Under the Fourth Amendment, a search occurs when the government intrudes upon an individual's reasonable expectation of privacy (REP). If the government action does not intrude upon a person's REP, then no search has occurred and the Fourth Amendment is not implicated.

The Test for REP

1. First, the individual must have exhibited an actual (subjective) expectation of privacy; and
2. Second, that expectation must be one that society is prepared to recognize as reasonable.

The absence of either prong of the test means that no REP exists and no search has been conducted. It is not a search to observe conduct that occurs openly in public, such as on a public street. This same principle applies to perceptions made through hearing or smelling.

Common areas with REP

- ✓ The Body
- ✓ Homes - The Supreme Court has repeatedly emphasized that the warrantless entry and search of a home is the chief *evil* against which the Fourth Amendment is directed.
- ✓ Vehicles - The owner/operator generally has REP for the interior of a vehicle, at least against physical intrusion. You may lawfully observe an item sitting on the front seat in open view.
- ✓ Containers - Purses, briefcases, backpacks, etc.; at least where those containers do not reveal their contents by the way they are designed.
- ✓ Curtilage - the area to which extends the intimate activity associated with the sanctity of a man's home and the privacies of life. Curtilage is considered part of the home itself for Fourth Amendment purposes, and an individual has REP in the curtilage surrounding a dwelling.
- ✓ Garbage - The key to determining whether there is REP in garbage is the location of the garbage at the time you encounter it. There clearly is REP in garbage located inside a home. However, when garbage is placed on the curb of a public street for final pick-up by a third-party (e.g., a trash collector), REP in the garbage no longer exists.
- ✓ Abandoned Property - There is no REP in abandoned

property. Abandonment occurs when an individual, either through word or deed, indicates an intention to permanently disavow any interest in the item or place. An individual may abandon an expectation of privacy in an object by denying knowledge or ownership of it.

A Fourth Amendment “Seizure”

Not all interactions between law enforcement officers and citizens amount to a seizure under the Fourth Amendment. Some encounters are purely voluntary. When your encounter with a citizen is completely consensual, the Fourth Amendment does not apply.

A person is seized when, based on the *totality of the circumstances*, including your application of physical force (however slight) or the person's submission to your show of authority, a reasonable person would not feel free to leave or otherwise terminate the encounter.

Property is seized when there is some meaningful governmental interference with an individual's possessory interests in that property.

Police-citizen Encounters

There are three types of police-citizen encounters: (1) a consensual encounter; (2) an investigative detention or —Terry stop; and (3) an arrest. Only the Terry stop and the arrest are considered seizures for Fourth Amendment purposes. The Fourth Amendment applies only when a seizure occurs.

Consensual Encounters (Voluntary Contacts)

A consensual encounter is a brief, voluntary encounter between law enforcement officers and citizens that requires neither probable cause nor reasonable suspicion. An encounter is consensual if the citizen is entitled to terminate it and leave at any time. A voluntary contact is NOT considered a seizure.

When conducting a consensual encounter, you may take any or all of the following actions without turning the contact into a seizure. First, you may approach an individual and ask questions, even incriminating questions. Second, you may request, but not demand, to see an individual's identification. Third, you may identify yourself and display your credentials. And fourth, you may seek consent for a search.

Your actions during a voluntary contact may be closely scrutinized by a court to determine whether the encounter became a seizure. Among the factors courts will examine to determine whether a seizure has occurred include: (1) the time, place, and purpose of the encounter; (2) the words used by you; (3) language or tone of voice that might indicate compliance with your request is mandatory; (4) the threatening presence of several officers; (5) whether weapons were displayed by the officer(s); (6) any physical touching of the citizen; (7) retention of the citizen's identification or personal property; and (8) whether the citizen was notified of his right to end the encounter (though this is certainly NOT a requirement for voluntary contacts).

Investigative Detentions “Terry Stops”

In Terry v. Ohio the Supreme Court recognized an investigative detention (Terry stop). An investigative detention is a brief, investigatory stop when a law enforcement officer has a reasonable, articulable suspicion that criminal activity is afoot.

The Requirements

To conduct an investigative detention of a person, you must have reasonable suspicion to believe that criminal activity is afoot. You do not have to be fully convinced that a crime is being committed, or even that you are stopping the right suspect. In allowing investigatory detentions, Terry accepts the risk that officers may stop innocent people. While reasonable suspicion is a lower standard than probable cause, you must still have explainable (articulable) reasons to justify a temporary seizure of a person. Criminal activity is afoot means that you must reasonably suspect that: (1) a crime is about to be committed; (2) a crime is being committed; or (3) a crime has been committed.

When you have reasonable suspicion that a piece of personal property, such as luggage, contains contraband or evidence of a crime, you may detain it in the same manner that you may detain a person. This does not necessarily allow you to search the item without other cause.

To determine whether reasonable suspicion exists, courts look at the *totality of the circumstances* of each case. You must be able to articulate facts demonstrating the possibility that the person stopped is connected to criminal activity. Through the use of a *totality of the*

circumstances test, you are allowed to draw on your own experience and specialized training to make inferences from and deductions about the cumulative information available to you that might well elude an untrained person.

Means of Establishing Reasonable Suspicion

You may use a variety of different investigative techniques to obtain enough information to establish reasonable suspicion to detain a person. For example, your personal observations may form the basis for reasonable suspicion to conduct an investigative detention. A great deal of deference is given to your personal observations. Additionally, you may establish reasonable suspicion based upon information provided by other law enforcement officers utilizing a concept sometimes referred to as collective knowledge. Information from an identified third party, such as a victim or witness, can also provide the facts necessary to justify reasonable suspicion. Finally, you may use information provided by informants to establish reasonable suspicion for an investigative detention.

The reliability of a tip provided by an informant depends on both the quantity and quality of the information provided by the source. A tip from a confidential informant with an established, positive track record would usually be considered reliable enough to establish reasonable suspicion with little or no corroboration. An anonymous tip by itself can be *insufficient*, especially when the source's truthfulness is unknown or the basis of knowledge is not clear (i.e., how does the source know that the information is true?).

Factors Justifying Investigative Detentions

You must be able to explain to a court why you decided to conduct an investigative detention of a suspect (i.e., what you heard or saw that led you to reasonably suspect that criminal activity was afoot). You can utilize a wide variety of factors to justify an investigative detention. Even apparently innocent conduct can, in appropriate instances, justify a Terry stop.

There could, of course, be circumstances in which wholly lawful conduct might justify the suspicion that criminal activity was afoot. Some common factors you can use to justify investigative detentions include, but are not limited to:

- ✓ A suspect's nervous behavior, although the application of this justification is of limited value;
- ✓ A suspect's criminal history, although standing alone this factor will not establish reasonable suspicion;
- ✓ An officer's knowledge of recent criminal conduct;
- ✓ The time and location of a given situation;
- ✓ A suspect's flight upon observing law enforcement officers, at least when combined with other factors;
- ✓ A suspect's presence in a high crime area, at least when combined with other factors; and
- ✓ A suspect's non-responsive behavior.

The Duration of an Investigative Detention

The duration of an investigative detention must be reasonable. An investigative detention must be temporary and last no longer than is necessary to effectuate the purpose of the stop, and the investigative methods employed should be the least intrusive means reasonably available to verify or dispel the officer's suspicion in a

short period of time. There is no brightline time limit for an investigative detention. The courts look to whether you diligently and reasonably pursued the investigation to quickly confirm or dispel your suspicions. The amount of force used and the level of restriction placed on movement may also be considered, in addition to the length of the detention. Your Terry stop must be reasonable in time, place, and manner.

The Use of Force During an Investigative Detention

Your use of force during an investigative detention must be reasonable under the totality of the circumstances. The Supreme Court has long recognized that the right to make an investigatory stop necessarily carries with it the right to use some degree of physical coercion or threat thereof to affect it. Weapons may be pointed at a suspect or handcuffs used, so long as it is justified. For instance, a subject that will not comply with lawful orders may be handcuffed, or you may point a gun at a suspect believed to be dangerous. Your use of these types of force must be *objectively reasonable* under the circumstances known to you at the time of the stop.

A “Terry Frisk” or “Limited Search”

When there is reasonable suspicion to believe that criminal activity is afoot, a LEO may stop and question the suspect. When there is reasonable suspicion to believe the suspect is presently armed and dangerous, the officer may conduct a frisk for weapons. A frisk, or protective search, is limited to a search of outer clothing for weapons. Protective searches do not include broad authority to

conduct a general search for evidence.

While as LEOs we may want to conduct a frisk for officer safety purposes, the law requires more than that. It requires specific, articulable facts to support a reasonable conclusion that the suspect has a weapon or something that could be used against the officer, partner or innocent third party. *Terry v. Ohio, (1968)*

Back in the 1960s, when Terry was decided, officers were mostly concerned about traditional guns and knives. The nature of the threat has changed dramatically since then. Certainly, traditional guns and knives still pose a significant danger; but weapons now come in all sorts of shapes, sizes, and disguises like cell phone guns, lipstick knives, credit card weapons, cigarette lighter stilettos, and stun guns, just to name some.

“Stopping” and “Frisking” a Person are two Different Things

Frisking is often misunderstood and becomes a controversial subject even in the most experienced law enforcement or legal circles. In the over forty years since Terry, the Supreme Court has only commented on frisking in six other cases. *Sibron v. New York*, 392 U.S. 40, (1968); *Adams v. Williams*, 407 U.S. 143, (1972); *Pennsylvania v. Mimms*, 434 U.S. 106 (1977); *Michigan v. Long*, 463 U.S. 1032, (1983); *Minnesota v. Dickerson*, 508 U.S. 366 (1993); *Florida v. J.L.*, 529 U.S. 266 (2000)

A LEO may **NOT** automatically frisk everyone lawfully “stopped” under Terry. In addition to reasonable suspicion that criminal activity is afoot, the LEO must also be able to articulate reasonable suspicion that the suspect is armed and dangerous. “Officer Safety”

alone will **NOT** justify a frisk. The LEO must explain “why” he believed the subject of the frisk was armed and dangerous.

Example: You are dispatched to a possible offense involving a stolen credit card. The clerk explains that the card used by the suspect was declined and in most similar circumstances it turns out to be stolen. That information provides you with enough reasonable suspicion to conduct a “Terry Stop” on the suspect, and investigate the credit card that he used. However, there is nothing about a stolen credit card that would automatically cause a LEO to believe the person is armed and dangerous. That means a “Terry Frisk” would NOT be reasonable unless other factors were present. If the suspect adjusted a bulge in his pocket or waistband it may allow for the frisk.

Example: The courts have indicated that certain crimes automatically go with weapons possession. Drug traffickers commonly carry guns to protect their product and money so officers can always conduct a “Terry Frisk” on someone they have lawfully stopped under “Terry”. Other such crimes include robbery and assaults with weapons. Burglars carry screwdrivers, crowbars, and other tools to commit their crimes and can also be frisked anytime reasonable suspicion exists of such criminal activity. People who break into cars use screwdrivers to gain entry and also to remove items like stereos and airbags. LEOs need only to articulate in their report why they suspected the person was armed and dangerous. A simple statement like “the suspect was seen trying to enter into several vehicles when he was stopped. From my experience and training, I know that people who steal vehicles (or break into them to commit a theft offense) commonly use screwdrivers or other tools that can be used as weapons against me. With that knowledge, I

conducted a “Terry Frisk” of his outer clothing since I believed he was possibly armed and dangerous.”

You may NOT utilize a Terry frisk to look for evidence of a crime

To justify a frisk, you must demonstrate two things: (1) first, the investigatory stop must be lawful; (2) and second, to proceed from a stop to a frisk, the police officer must reasonably suspect that the person stopped is armed and dangerous. (*Arizona v. Johnson*)

A frisk is limited search for WEAPONS

It may be conducted even after the suspect has been handcuffed. You may check the outside of the suspect’s clothing for any **hard objects** that could potentially be a weapon concealed underneath. Once a hard object is encountered, you are then entitled to go inside the clothing and retrieve the item. When dealing with winter clothing, you may reach inside and beneath a heavy jacket and frisk underneath it to avoid missing any weapons. You may also frisk any unlocked containers (purses, back packs, etc.) in the suspect’s possession. As with investigative detentions, you may establish reasonable suspicion that a suspect is presently armed and dangerous through a variety of different methods, including personal observations, information from other officers, and information from third-parties, such as informants. *Terry v. Ohio*, (1968), *Ybarra v. Illinois*, (1979).

Factors Used to Justify a Terry Frisk

The list of factors you may use as justification for a Terry frisk is extensive. The following are some of the most commonly

recognized:

- ✓ A suspect, through past criminal history or association with violent gangs, has a reputation for being armed and dangerous;
- ✓ A bulge in a suspect's clothing indicating the possible presence of a weapon;
- ✓ A furtive movement by the suspect;
- ✓ A suspect's words and actions, such as refusing to comply with your directions;
- ✓ A tip from a reliable informant that the suspect is armed and dangerous
- ✓ Your reasonable suspicion that the suspect has committed a crime, such as armed robbery, burglary, or drug trafficking, that by its very nature indicates the likelihood that the perpetrator is armed and dangerous.

This list is not exhaustive. Whether there are sufficient factors present to establish reasonable suspicion to conduct an investigative detention is ultimately a *totality of the circumstances* test.

Consent to Frisk

If a LEO has enough information to conduct a "Terry Stop" but not enough to support a "Terry Frisk" they can always ask the subject for consent to conduct a search for weapons or contraband. Many times the suspect(s) will consent to a frisk for such items, and as a LEO you will only be restricted by the extent of their consent to search. Always consider asking for consent when in doubt.

The Plain Touch Doctrine

While the purpose of a Terry frisk is to discover weapons, not evidence of a crime, the Supreme Court has already held that you, at least under certain circumstances, may seize contraband detected during the lawful execution of a *Terry Frisk*. This has become known as the plain touch doctrine.

The plain touch doctrine is nothing more than an expansion of the plain view doctrine. In order to lawfully seize evidence under the plain touch doctrine, you must meet two requirements. First, the frisk that led to the discovery of the evidence must have been lawful. Second, the incriminating nature of the item must be *immediately* apparent. This means you must have probable cause that the object encountered is contraband or criminal evidence based on what you initially felt. You are not permitted to manipulate soft objects for the purpose of identifying an item.

Minnesota v. Dickerson. Hard objects, of course, can be retrieved by you as potential weapons, and any evidence or contraband encountered in that process may be seized.

Detaining Vehicles

The Fourth Amendment applies to seizures of the person, including brief investigatory stops such as the stop of a vehicle. Stopping an automobile and detaining its occupants constitutes a seizure within the meaning of the Fourth Amendment, even though the purpose of the stop is limited and the resulting detention quite brief.

In 2007 the Supreme Court decided the case of *Brendlin v.*

California, holding that a passenger inside a vehicle is seized under the Fourth Amendment when the driver is stopped for a traffic offense.

Whether stopping a person on foot or in a vehicle, the standard is the same. You must have, at a minimum, reasonable suspicion that the person stopped is, or is about to be, engaged in criminal activity.

What's Required to Conduct a Traffic Stop in Ohio

In *U.S. v Hughes*, (May 27, 2010) the Sixth Circuit Court of Appeals gave officers in Ohio specific requirements to conduct traffic stops: For a traffic stop to be permissible under the Fourth Amendment, a police officer must know or reasonably believe that the driver of the car is doing something that represents a violation of law at the time of the stop. An officer may not use after-the-fact rationalizations to justify a traffic stop where, at the time of the stop, the officer was not aware that a defendant's actions were illegal.

The Sixth Circuit has developed two separate tests to determine the constitutional validity of vehicle stops. An officer **must** have **probable cause** to make a stop for a civil infraction (traffic violations), and **reasonable suspicion** of an ongoing crime to make a stop for a criminal violation.

In order for a traffic stop to be proper an officer needs to have probable cause rather than reasonable suspicion that a driver has violated a traffic ordinance at the time of the stop. Reasonable suspicion is only sufficient for cases of ongoing criminal activity. LEOs **cannot** just stop cars on a hunch or whim. They need more.

Permissible Actions During Vehicle Stops

The Supreme Court has long recognized the very real dangers you face when confronting suspects located in vehicles. For that reason, when you conduct vehicle stops, you may take such steps as are reasonably necessary to protect your personal safety. This would include, among other things:

- ✓ Removing the driver and passengers from the vehicle;
- ✓ Ordering the driver and passengers to remain in the vehicle;
- ✓ Using a flashlight to illuminate the interior of the vehicle;
- ✓ Conducting license and registration checks; and
- ✓ Questioning the driver regarding his or her travel plans.

A Terry Frisk of a Vehicle

In addition to the permissible actions outlined above, you may also be permitted to conduct a frisk of the vehicle for weapons. In *Michigan v. Long* the Supreme Court expanded the scope of a Terry frisk to include vehicles. *Long* provides that if you have reasonable suspicion to believe that the driver or passenger in a vehicle is dangerous and may gain immediate control of a weapon, you may frisk that person, as well as the entire passenger compartment of the vehicle. This frisk of the vehicle may include any unlocked containers located in the passenger compartment. You may not frisk the trunk of a vehicle.

The Duration of Vehicle Stops

As with a traditional investigative detention, an investigative detention that occurs in a vehicle must be temporary and last no

longer than is necessary to effectuate the purpose of the stop. This means that once the citation or warning has been issued, and all records checks have been conducted, the stop must end and the driver must be released. Should the detention continue past this point, you must show that the extension was based either upon the driver's consent, or because you established reasonable suspicion during the original stop that some additional misconduct was occurring.

Pretextual Vehicle Stops

Pretextual traffic stops are permissible. A pretextual traffic stop occurs when you use a legal justification (e.g., an observed traffic violation) to stop an individual in order to investigate a different, more serious crime for which you have no reasonable suspicion (e.g., drug trafficking).

In *Whren v. United States* the Supreme Court upheld pretextual traffic stops, noting that the constitutionality of a traffic stop does not depend on the actual motivations of the individual officers involved.

Traffic Stops Outside Officers Jurisdiction

State v. Weideman (2002), 94 Ohio St.3d 501

May 24, 1998, Ravenna Officer Rarrick was half a mile outside Ravenna. He observed a car coming toward him, traveling "well left of center." Weideman was detained by Officer Rarrick until an OSP Trooper arrived 20 minutes later. Weideman had a BAC of .239 and was charged with OVI. He appealed the traffic stop and seizure since Officer Rarrick was outside of his jurisdiction when the stop

occured

The Ohio Supreme Court found that Officer Rarrick's stop was reasonable, and did *NOT* violate the Fourth Amendment

State v. Jones, 121 Ohio St.3d 103, 2009-Ohio-316

September 27, 2006, Sgt. Mitchell Hershberger of the East Canton Police Department was investigating a Hit/Skip. He left his jurisdiction to look for suspect vehicle. He spotted the red truck with no lights on, due to accident damage. He stopped the vehicle and made an arrest for DUS and CCW.

“A law enforcement officer who personally observes a traffic violation while outside the officer's statutory territorial jurisdiction has probable cause to make a traffic stop; the stop is not unreasonable under the Fourth Amendment to the United States Constitution.”

Your department policies may restrict you from making a traffic stop outside of your jurisdiction, but the Supreme Court simply instructs lower courts to look at the “totality of the circumstances” to decide if it was reasonable to make the traffic stop outside of your jurisdiction.

Prolonged Traffic Stops

Officers will commonly stop a vehicle for a traffic violation and issue a citation or warning. You may then ask for consent from the owner to search the vehicle for weapons, drugs, or other contraband. The motorist must believe by your words and actions that they are free to leave and don't have to answer any further questions to make the consent valid. The courts will look at each of these instances to see

if it was reasonable under the 4th Amendment. A recent case came out of the Sixth Circuit providing guidance to officers making prolonged traffic stops.

U.S. v. Everett, April 06, 2010

The court stated: “There is no categorical ban on suspicionless, unrelated questioning that may minimally prolong a traffic stop.”

“The proper inquiry is whether the totality of the circumstances surrounding the stop indicates that the duration of the stop as a whole – including any prolongation due to suspicionless, unrelated questioning – was reasonable. The overarching consideration is the officer’s diligence in ascertaining whether the suspected traffic violation occurred, and, if necessary, issuing a ticket.”

The subject (that is to say, some questions are “farther afield” than others) and the quantity of the suspicionless, unrelated questions are part of the “totality of the circumstances” of the stop. Some amount of questioning relevant only to ferreting out unrelated criminal conduct is permissible. A lack of diligence may be shown when questions unrelated to the traffic violation constituted the bulk of the interaction between the trooper and the motorist.

Because the safety of the officer is a legitimate and weighty interest, the officers conducting a traffic stop may inquire about dangerous weapons.

State of Ohio v. Robinette 1997

“Once an individual has been unlawfully detained [Once the reason

for the initial stop ends, the reason for the detention ends], in order for a consent to search to be considered an independent act of free will, the totality of the circumstances **must clearly demonstrate** that a reasonable person would believe she/he had the **freedom** to refuse to answer any additional questions and could in fact leave the area.”

Ohio Police Don't Need Radar

The Ohio Supreme Court ruled that a trained LEO does not need a radar for probable cause of speeding. They stated: “A police officer’s unaided visual estimation of a vehicle’s speed is sufficient evidence to support a conviction for speeding in violation of ORC 4511.21(D) without independent verification of the vehicle’s speed if the officer is **trained, certified, and experienced** in visually estimating vehicle speed.” *City of Barberton v. Jenney (June 2, 2010)*

Mobile Conveyance Exception – Vehicle Searches

There are two requirements to search a vehicle:

1. The LEO must have probable cause to believe that evidence of a crime or contraband is located in the vehicle to be searched.
2. The vehicle must be “readily mobile.”

Case Law for Motor Vehicle Searches

If an officer stops a car based on probable cause and conducts a search in order to preserve evidence due to the automobile’s mobility, the search may be conducted without a warrant. *Carroll v.*

United States (1925)

A warrantless search of a vehicle is valid despite the fact that a warrant could have been procured without endangering the preservation of evidence. *Chambers v. Maroney (1970)*

If probable cause justifies the search of a lawfully stopped vehicle, it justifies the search of every part of the vehicle and its contents that may conceal the object of the search. *United States v. Ross (1982)*

Officers are not required to obtain a search warrant for a mobile conveyance even if they have time to secure one. *Maryland v. Dyson (1999)*

A motor home is treated as a vehicle, rather than a dwelling, if it is immediately mobile. *California v. Carney (1985)*

In a search extending to a container located in an automobile, police may search the container without a warrant where they have probable cause to believe that it holds contraband or evidence. *California v. Acevedo (1991)*

The mobile conveyance exception allows officers to search passenger's containers (purses, backpacks, etc.) if probable cause supports the items could be concealed inside such a container. *Wyoming v. Houghton (1999)*

Marijuana Odor as Probable Cause

The State of Ohio v. Moore (2009)

The smell of marijuana, **alone**, by a person qualified to recognize the odor, is sufficient to establish probable cause to search.

However, even under such an analysis, if the smell of marijuana, as detected by a person who is qualified to recognize the odor, is the sole circumstance, this is sufficient to establish probable cause. There need be **no** additional factors to corroborate the suspicion of the presence of marijuana.

U.S. v. Foster (2004)

“Accordingly, when the officers detected the smell of marijuana coming from Foster’s vehicle, this provided them probable cause to search the vehicle without a search warrant. U.S. v. Elkins, 300 F.3d 38 (6th Cir. 2002) This therefore turned a lawful Terry stop into a lawful search.”

Probable Cause (PC)

The Fourth Amendment provides that no Warrant shall issue but upon probable cause In cases in which the Fourth Amendment requires that a warrant to search be obtained, probable cause is the standard by which a particular decision to search is tested against the constitutional mandate of reasonableness. Some searches may be performed without a warrant— many of these require probable cause. Probable cause is also required to obtain an arrest warrant or to arrest someone without an arrest warrant. The level of probable cause required to proceed without a warrant is the same level required to obtain a warrant.

Defining Probable Cause

Articulating precisely what probable cause means is not possible. Probable cause is a fluid concept - turning on the assessment of probabilities in particular factual contexts – not readily, or even usefully, reduced to a neat set of legal rules. Nonetheless, some basic definitions for probable cause to arrest or search have been formulated.

Probable cause to search exists where the known facts and circumstances are sufficient to warrant a man of reasonable prudence in the belief that contraband or evidence of a crime will be found in the place to be searched.

Probable cause to arrest exists when the known facts and circumstances are sufficient to warrant a prudent man in believing that the suspect had committed or was committing an offense.

The Test for Probable Cause

Courts use a *totality of the circumstances* test to determine whether probable cause exists. This means that all facts known to you are considered.

The focus in determining *probable cause* is **not** on the *certainty* that a crime was committed, but on the *likelihood* of it.

Your determination of probable cause will be affirmed if a reasonable argument can be made, based in fact, that the suspect committed a specific crime, or that evidence will be found in the

place to be searched.

Establishing Probable Cause

You may establish probable cause in any number of different ways. Perhaps the easiest way is through your direct observations. You may also use your sense of smell, such as when you smell the odor of marijuana emanating from a vehicle. Further, probable cause may be established by the collective knowledge of many law enforcement officers, each of whom has some fact available that, when taken in sum, establishes the existence of probable cause. You may rely on your training and experience in making a probable cause decision so long as there are sufficient additional facts to support it.

Information provided solely by victims and/or witnesses can be sufficient to establish probable cause, given a proper basis of knowledge, when there is no evidence indicating that either the information or the victim/witness is not credible. Probable cause may be established through information provided by a confidential informant or anonymous source. When a confidential informant or anonymous source is the source of the information, however, certain issues must be considered.

U.S. v. Brooks, (February 05, 2010) PC for Search Warrant

Probable cause to search a location is not dependent upon whether the officers already have probable cause or legal justification to make an arrest. The question is whether the information known by the affiant and conveyed to the magistrate makes it fairly probable that there will be additional contraband or evidence of a crime in the

place to be searched.

Probable cause to search for more marijuana exists where there is evidence of marijuana use immediately prior to the officers' arrival (the strong odor of marijuana smoke). The magistrate is not required to assume that the defendant has just smoked his last bit of marijuana immediately before the officers arrived. Instead, it is fairly probable under these facts that where there is smoke, there may be more there to smoke.

The same logic does not necessarily apply to the seeds in the ashtray as, standing alone and without the corroboration of the smell of marijuana smoke, it is impossible to know how long the seeds had been in the ashtray. Accordingly, the mere presence of marijuana seeds in an ashtray would likely be insufficient to establish probable cause to search the residence due to the uncertainty of how long ago the seeds got there.

The Exclusionary Rule

The Fourth Amendment does not by its own terms require that evidence obtained in violation of its mandates be suppressed. Instead, the exclusionary rule was developed by the Supreme Court. Evidence obtained as a result of an unlawful search and/or seizure is inadmissible in criminal trials. This is true even if the evidence was not seized as a direct result of the Fourth Amendment violation; evidence which indirectly derives from information learned illegally is also inadmissible.

This is often called the fruit of the poisonous tree doctrine. For example, although searching arrestees incident to their arrest is

generally permitted, evidence found in a search incident to an arrest which was not supported by probable cause would be inadmissible. And stolen property would be inadmissible if it was retrieved by following a map found during an illegal search of a suspect's home. The exclusionary rule is intended to deter police misconduct by creating negative consequences for disregarding the Fourth Amendment requirements. However, the exclusionary rule has never been held to prohibit the introduction of illegally seized evidence in every situation, and courts have developed a number of exceptions to the general rule.

Inevitable Discovery

Evidence should be admitted if the prosecution can establish by a preponderance of the evidence that it ultimately or inevitably would have been discovered by lawful means because the exclusionary rule's deterrence rationale has so little basis. This has become known as the inevitable discovery exception. This language was recently repeated by the Sixth Circuit in *U.S. v. Quinney* (2009).

In *Quinney* they also stated "However, the inevitable-discovery doctrine does not permit police, who have probable cause to believe a home contains contraband, to enter a home illegally, conduct a warrantless search and escape the exclusionary rule on the ground that the police could have obtained a warrant yet chose not to do so."

The Sixth Circuit has held that the inevitable discovery exception applies whenever an independent investigation inevitably would have led to discovery of the evidence, whether or not the

investigation was ongoing at the time of the illegal police conduct.

“The fact that a search or arrest was unreasonable does not necessarily mean that the exclusionary rule applies.” Illinois v. Gates, (1983).

“The exclusionary rule is not an individual right and applies only where its deterrent effect outweighs the substantial cost of letting guilty and possibly dangerous defendants go free.” U.S. v. Leon, (1984)

Herring v. United States, 2009 U.S. 581, January 14, 2009

Based upon erroneous information provided by another law enforcement agency about the existence of an active arrest warrant, defendant was arrested, searched, and evidence was seized. There was, in fact, no active arrest warrant, making the arrest and the search incident to it unlawful.

The exclusionary rule does not apply when police mistakes leading to an unlawful search are the result of isolated negligence attenuated from the search, rather than systemic error or reckless disregard of constitutional requirements. To trigger the exclusionary rule, police conduct **MUST** be sufficiently deliberate that exclusion can meaningfully deter it, and sufficiently culpable that such deterrence is worth the price paid by the justice system. The pertinent analysis is objective, not an inquiry into the arresting officers' subjective awareness.

The “Plain View” Doctrine

The plain view doctrine allows officers to seize evidence they discover while in a public place or lawfully inside an REP protected area. If an officer can **see, hear or smell** evidence from a place he legally occupies the evidence can lawfully be obtained providing it meets a few requirements. There are three such requirements you must meet for a permissible plain view seizure of evidence.

1. You **must** lawfully be in a position to observe the item;
2. The incriminating nature of the item **must** be immediately apparent; and,
3. You **must** have a lawful right of access to the object itself.

Lawful Position of Observation

The first requirement of any plain view seizure is that you must have a lawful reason to be in the location from which you observed the item. A lawful reason to be in a dwelling would be a warrant, consent, or an exigent circumstance. If you conduct a lawful protective sweep while serving an arrest warrant and find a sawed-off shotgun in a bedroom closet, you may seize that evidence under the plain view doctrine. If you are exceeding the lawful scope of a protective sweep by opening the medicine cabinet, however, any evidence you see inside the medicine cabinet would fall outside the plain view doctrine.

The Incriminating Nature of the Item Must Be Immediately Apparent

Not only must the item be seen from a place you have a legal right to be, but its incriminating character must also be immediately

apparent. This means you must have probable cause to believe that the object is contraband or evidence of a crime. If you must conduct some further search of the object before you can establish probable cause to believe that it is contraband, then its incriminating character is not immediately apparent and the plain-view doctrine cannot justify its seizure. The standard is not high, and a plain view seizure is presumptively reasonable, provided there is probable cause to associate the property with criminal activity.

Lawful Right of Access

Finally, even if you can see the object from a place where you are lawfully present, you may not seize it unless you have a lawful right of access to the object itself. Your personal observations may convince you that there is criminal evidence inside a premises. But even when the evidence is contraband, the basic rule is that you may not enter and seize it without a warrant, consent, or exigent circumstances. For example, you may stand on the public sidewalk and see a marijuana plant growing inside someone's living room. Without additional facts, however, you may not yet enter the residence and seize the plant. You have no lawful right of access to the living room where the plant is located. If the resident were to grant you consent to enter, however, or if the resident saw you through the window and began destroying the plant, you could lawfully enter the house and access the evidence. Remember, the plain view doctrine is not a tool that allows you to search for evidence, but only to seize it if you meet the rule's criteria.

State of Ohio v. Buzzard, (2007) Plain View

"The detective in this case followed tracks from the scene of the

burglary directly to the doors of the garage. There is nothing before us to suggest that the garage was used by the appellee for any intimate activity associated with the 'sanctity of a man's home and the privacies of life.' Here, the viewing took place in front of the garage, where there is a diminished expectation of privacy."

"Generally, the police are free to observe whatever may be seen from a place where they are entitled to be. ... This understanding of the Fourth Amendment is expressed in the plain-view doctrine. The doctrine embodies the understanding that privacy must be protected by the individual, and if a police officer is lawfully on a person's property and observes objects in plain or open view, no warrant is required to look at them."

The Supreme Court of Ohio held that a police officer who peered through a small gap between the closed garage doors and saw some of the stolen goods ***DID NOT*** conduct an illegal search. *State v. Buzzard, 2007*

Arrests & Arrest Warrants

A warrant is not always required for an arrest to be lawful. However, when an individual is arrested, both statutory and Constitutional requirements must be satisfied. The three requirements for a lawful arrest are (1) probable cause, (2) arrest authority, and (3) a lawful right of access to the suspect.

Arrest Authority

The scope of your arrest authority is established by statute. You must know the extent of your authority granted by these statutes

(ORC 2935.01).

Right of Access: Entering a Home to Make An Arrest

The physical entry of the home is the chief evil against which the wording of the Fourth Amendment is directed (*Welsh v. Wisconsin*). For that reason, entering a home to arrest a person without a warrant is typically a violation of the Fourth Amendment, regardless of whether you have probable cause to arrest the suspect. In order to lawfully enter a person's home to make an arrest, you must have: (1) an arrest or search warrant; (2) consent; or (3) an exigent circumstance.

Entering the Suspect's Home to Make an Arrest

For Fourth Amendment purposes, an arrest warrant founded on probable cause implicitly carries with it the limited authority to enter a dwelling in which the suspect lives when there is reason to believe the suspect is within (*Payton v. New York*). In essence, this means that you must have: (1) a reasonable belief that the suspect lives at the home to be entered, and (2) a reasonable belief that the suspect is currently present in the home.

In determining whether a suspect is present in the home prior to executing the arrest warrant, courts look to the *totality of the circumstances* known to you at the time of the entry. In deciding this issue, courts typically consider several factors, including:

- ✓ Any surveillance information indicating the suspect is in the home, although the actual viewing of the suspect is not required;

- ✓ The presence of the suspect's vehicle, which may indicate his presence;
- ✓ The time of day (e.g., 8:30 a.m. on a Sunday morning);
- ✓ Observation of lights or other electrical devices, such as televisions or stereos;
- ✓ The circumstances of a suspect's employment, which may indicate when he is likely to be at his home;
- ✓ Information from third parties (e.g., confidential informants or neighbors) indicating the suspect is present in the home.

ORC 2935.12. Forcible entry in making arrest or executing search warrant

A) When making an arrest or executing an arrest warrant or summons in lieu of an arrest warrant, or when executing a search warrant, the peace officer, law enforcement officer, or other authorized individual making the arrest or executing the warrant or summons may break down an outer or inner door or window of a dwelling house or other building, if, after notice of his intention to make the arrest or to execute the warrant or summons, he is refused admittance, but the law enforcement officer or other authorized individual executing a search warrant shall not enter a house or building not described in the warrant.

"Statutory precondition for nonconsensual entry" means the precondition specified in section 2935.12 of the Revised Code that requires a law enforcement officer or other authorized individual executing a search warrant to give notice of his intention to execute the warrant and then be refused admittance to a dwelling house or other building before he legally may break down a door or window to

gain entry to execute the warrant.

Knock and Announce Rule

The requirement to “knock and announce” has three primary purposes: (1) to reduce the potential for violence to both the officers and the occupants of the house; (2) to prevent, or at least reduce, the needless destruction of private property; and (3) to recognize an individual’s right of privacy in his house.

You Must First “Knock”

An actual physical knocking is only one manner in which you can give notice of your presence. Other methods include placing a phone call to the residence, utilizing a bullhorn, or utilizing a police loudspeaker or public address system.

Announcement of Authority and Purpose

In addition to providing notice, you are required to announce your authority and purpose for being there. No special words are necessary to satisfy this requirement. “Police with an arrest (or search) warrant, open the door!” The focus of the “knock and announce” rule is not on what magic words are spoken by the police, or whether the police rang the doorbell, but rather on how the words and other actions of the police will be perceived by the occupant. The proper trigger point, therefore, is when those inside should have been alerted that the police wanted entry to execute a warrant.

You Must Be Refused or Denied Admittance

Once you have been refused or denied admittance, you can use force to break into the residence and execute the warrant. While the refusal or denial of admittance is sometimes done explicitly, more often it is inferred from the circumstances. Some of the most common circumstances indicating a refusal of admittance are:

- ✓ Silence. A refusal to comply with an officer's order to open up can be inferred from silence. This is only true in situations where a *reasonable* period of time has passed after your command. Factors that courts have considered in making this determination include: (1) the time of day; (2) the size and physical layout of the residence; (3) the nature of the crime at which the warrant is directed; (4) any evidence indicating guilt of the suspect; (5) and any other observations supporting a forced entry, such as defensive measures taken by the residents of the premises.
- ✓ Sounds of Flight by the Occupants.
- ✓ Sounds of Evidence Being Destroyed. For example, the sounds of a toilet flushing.
- ✓ The Nature of the Evidence Sought. How quickly could the occupants destroy the items you're looking for?
- ✓ Verbal Refusal. For example, the occupant yells "go away!"
- ✓ Gunfire From Inside the Residence.

Entering a Third-Party's Home to Make An Arrest

An arrest warrant does not allow you to lawfully enter a home where the target does not reside to make the arrest. Instead, you must have: (1) a search warrant; (2) the consent of the third-party

homeowner/occupier; or (3) an exigent circumstance. *Steagald v. United States*.

Ohio Revised Code: Chapter 2935 - Arrest

This chapter will cover your authority to arrest suspects based on probable cause, arrest warrants, and other alternative actions. Officers should keep these requirements fresh in their minds.

2935.04 When *Any* Person May Arrest

When a FELONY has been committed, or there is reasonable ground to believe that a felony has been committed, ***any person*** without a warrant may arrest another whom he has reasonable cause to believe is guilty of the offense, and detain him until a warrant can be obtained. Effective Date: 10-01-1953

2935.04 allows you as an officer to make any felony arrest without a warrant, providing you have reasonable cause (probable cause). It also allows ***any*** citizen to do the same. Ohio allows for a citizen to make an arrest for a felony offense if they have *reasonable cause to believe* the person is guilty of a felony.

2935.03 Authority to Arrest Without a Warrant

(A)(1) A deputy sheriff, municipal police officer,... *shall arrest and detain*, until a warrant can be obtained, a ***person found violating***, within the limits of the political subdivision,... in which the peace officer is appointed, employed, or elected, a law of this state, an

ordinance of a municipal corporation, or a resolution of a township.

Section (A)(1) allows you as an officer to arrest anyone without a warrant if you “catch them in the act” of a misdemeanor offense. You should personally observe some part of the offense in question to make the arrest without a warrant unless another exception to the warrant requirement exists.

(B)(1)When there is **reasonable ground to believe** that an offense of ...

- ✓ criminal child enticement 2905.05...
- ✓ public indecency 2907.09...
- ✓ domestic violence 2919.25...
- ✓ violating a protection order 2919.27...
- ✓ menacing by stalking 2903.211...
- ✓ aggravated trespass 2911.211...
- ✓ theft offense 2913.01...
- ✓ felony drug abuse offense 2925.01

And the following acts of violence...

- ✓ Inducing panic 2917.31...
- ✓ Aggravated menacing 2903.21...
- ✓ Menacing by stalking 2903.211...
- ✓ Menacing 2903.22...
- ✓ Inciting to violence 2917.01...
- ✓ Endangering children 2919.22...

... has been committed within the limits of the political subdivision,... the LEO **may arrest and detain** until a warrant can be obtained any

person who the peace officer has *reasonable cause to believe* is guilty of the violation.

Section (B)(1) allows you to arrest anyone without a warrant based on a “reasonable ground to believe” (probable cause) that one of the listed offenses under the chapter have been committed.

Any other misdemeanors not listed **require** you to obtain an arrest warrant if you did not witness them yourself. Let’s say a group of people “toilet papered” a house (Criminal Mischief). The home owner witnessed the offense. When you arrived the group was gone, but the owner gave you their names along with a witness statement. To make an arrest you would be **required** to obtain an arrest warrant. You did not witness the offense as prescribed in 2935.03(A)(1) to make an arrest, and the offense of Criminal Mischief is not one of the statutes listed under 2935.03(B)(1).

The 4th Amendment requires warrants to seize individuals. The above statute makes a few reasonable exceptions to the warrant requirement, but does not excuse the requirement in all cases. When in doubt an officer should always obtain an arrest warrant.

2935.03 Authority to Arrest Without Warrant – Pursuit Outside Jurisdiction

(D) If a sheriff, deputy sheriff, municipal police officer,... within the limits of the political subdivision,... may pursue, arrest, and detain that person until a warrant can be obtained if all of the following apply:

- (1) The pursuit takes place without unreasonable delay
- (2) The pursuit is initiated within the limits of the political subdivision,...
- (3) The offense involved is a felony, M-1, M-2, offense with points under 4510.036

2935.041 Detention and arrest of shoplifters

(A) A merchant, or an employee ... who has probable cause to believe that items ... have been unlawfully taken by a person, may,... detain the person in a reasonable manner for a reasonable length of time within the mercantile establishment or its immediate vicinity.

(C) A merchant or employee... may detain another person for any of the following purposes: (1) To recover the property that is the subject of the unlawful taking, criminal mischief, or theft; (2) To cause an arrest to be made by a peace officer; (3) To obtain a warrant of arrest.

(E) The officer, agent, or employee... shall not search the person detained... without the person's consent, or use undue restraint upon the person detained. (F) Any peace officer may arrest without a warrant... if he/she has probable cause

2935.07 Person arrested without warrant shall be informed of cause of arrest

When an arrest is made without a warrant by an officer, he shall inform the person arrested of such officer's authority to make the

arrest and the cause of the arrest.

When a person is engaged in the commission of a criminal offense, it is not necessary to inform him of the cause of his arrest.

Searches Incident to Arrest (SIA)

It has long been recognized that conducting a search incident to a lawful arrest is a “reasonable” search under the Fourth Amendment and a valid exception to the warrant requirement.

The Scope of a Search Incident to Arrest

- ✓ The Person of the Arrestee
- ✓ The Area Within the Arrestee’s “Immediate Control”

Rationales for the Rule

In *Chimel v. California*, the Supreme Court outlined three distinct reasons for permitting searches incident to arrest: (1) to discover weapons; (2) to prevent the destruction or concealment of evidence; and (3) to discover any means of escape.

You do not have to specifically believe that the arrestee possesses evidence, weapons, or a means of escape on his person before a search incident to that arrest is justified. The fact the individual has been arrested enables you to conduct a search of that person.

Requirements for a Search Incident to Arrest

A search incident to arrest may only be conducted when three requirements have been met. First, there must be a lawful custodial arrest. This requires both probable cause that the arrestee has committed a crime and an actual arrest. A search incident to arrest may not be conducted in a situation where an actual custodial arrest does not take place.

For example, you may not conduct a search incident to arrest in a Terry-type situation. A search incident to arrest is more intrusive than a frisk for weapons. A search incident to arrest is not authorized when an individual receives only a citation for an offense, such as a traffic violation, even if the individual could have been taken into custody (*Knowles v. Iowa*).

The second requirement for a lawful search incident to arrest is that the search must be substantially contemporaneous with the arrest (*New York v. Belton*). The exact meaning of this phrase is open to interpretation, but it generally means that a search incident to arrest must be conducted at about the same time as the arrest. A search too remote in time or place from the arrest cannot be justified as incident to the arrest.

There is a third requirement that the area to be searched has to be currently accessible, at least in some measure, by the defendant. If the defendant has been removed from the area of the search, the justification for finding weapons or destructible evidence is gone. *Arizona v. Gant*

(“If there is no possibility that an arrestee could reach into the area

that law enforcement officers seek to search, both justifications for the search incident-to-arrest exception are absent and the rule does not apply.”) Some courts may even consider a well-secured suspect (handcuffed, with multiple officers present) to lack access to the surrounding area. At a minimum, officers should avoid performing a search incident to arrest once the suspect has been removed from the area.

In limited circumstances, the search may take place before the actual arrest occurs. “Where the formal arrest follows quickly on the heels of the ... search of the defendant’s person, it is not particularly important that the search preceded the arrest rather than vice versa.” (Rawlings v. Kentucky). In such cases, none of the evidence found during the pre-arrest search may be used as probable cause for the arrest.

Vehicles and “Search Incident to Arrest” SIA

The rule that allows officers to search the area within the immediate control of an arrested suspect also applies to vehicles. Custodial arrest of an occupant of the vehicle is required. There is no search incident to citation.

There is no requirement that the occupant arrested be the owner or driver of the vehicle. The term occupant could include someone located outside the vehicle at the time of the arrest, so long as the person arrested is a recent occupant of the vehicle. (Thornton v. United States).

As with other searches incident to arrest, the purpose is to search for potential weapons and evidence that could be destroyed. This

includes the entire passenger compartment of the vehicle, along with containers in that part of the car. As stated above, however, when “there is no possibility that an arrestee could reach into the area that law enforcement officers seek to search... the rule does not apply.” (Arizona v. Gant).

A “container” is any object capable of holding another object, and includes closed or open glove compartments, consoles, or other receptacles located anywhere within the passenger compartment, as well as luggage, boxes, bags, clothing, and the like. While this definition does not expressly address “locked” containers, several federal circuits have held that locked containers are within the scope of a lawful search incident to arrest. The inaccessible trunk of a vehicle, however, is not within the immediate control of an arrestee and cannot be searched incident to arrest.

Searching Cell Phone Data SIA

Ohio v. Smith, (Dec 15, 2009)

...when the search is not necessary to protect the safety of law enforcement officers and there are no exigent circumstances... police must obtain a search warrant for the phones data...

In Ohio, as a LEO you will need a search warrant, consent, or exigent circumstances to search the data of a cell phone.

Protective Sweeps

A “protective sweep” is a quick and limited search of a premises incident to an arrest, which is conducted to protect the safety of

police officers or others. It is narrowly confined to a cursory visual inspection of those places in which a person might be hiding.

Scope of a Protective Sweep

1. Areas to be Searched

A protective sweep is not a full search of a dwelling. You may only sweep those spaces where an individual might be found. For example, a search inside a medicine cabinet is outside the scope of a permissible protective sweep because persons could not reasonably hide inside a medicine cabinet.

Incriminating evidence found during a lawful protective sweep may be seized under the plain view doctrine. This discovery of evidence does not, however, justify a subsequent warrantless search of the residence for additional evidence. You may use the incriminating evidence to obtain a search warrant for the premises.

2. Timing of the Sweep

The Supreme Court has ruled that a protective sweep may last no longer than it takes to complete the arrest and depart the premises (*Maryland v. Buie*). Although there is no bright-line rule on how long a protective sweep may last, they are generally measured in minutes. The longer you take to complete a protective sweep, the more likely a court will find the sweep excessive.

Two Kinds of Protective Sweeps

“Automatic” Protective Sweeps - Officers armed with an arrest

warrant (or a search warrant for a person to be arrested) may enter the premises and search for the arrestee in any area that could conceal a person. Once the arrestee is located and the arrest is made, as a precautionary matter and without probable cause or reasonable suspicion, officers may look in closets and other spaces immediately adjoining the place of arrest from which an attack could be immediately launched (*Maryland v. Buie*). Although the limited search is for people, any evidence or contraband found in plain view may be seized.

“Extended” Protective Sweeps - In *Buie*, the Supreme Court held that if officers wish to sweep beyond the area immediately adjacent to the place of arrest, —there must be articulable facts which, taken together with the rational inferences from those facts, would warrant a reasonably prudent officer in believing that the area to be swept harbors an individual posing a danger to those on the arrest scene.

Facts establishing a reasonable suspicion that another, dangerous person is present at the scene include an occupant’s demeanor, furtive movements by an occupant, noises indicating that additional persons are present at the residence, and cars in the driveway registered to criminal associates of the suspect.

Searches Based on Exigent Circumstances

It is a well-established rule of law that searches conducted without warrants are presumptively unreasonable, subject to only a few limited exceptions. A warrantless search based upon an exigent circumstance is one such exception. Exigent circumstances exist when a reasonable person would believe that, based on the available facts, an immediate search is necessary to prevent the

escape of a suspect, the destruction of evidence, or the death or injury of a person.

Factors considered by courts in determining whether exigent circumstances exist include: (a) the gravity or violent nature of the offense with which the suspect is to be charged; (b) a reasonable belief that the suspect is armed; (c) probable cause to believe the suspect committed the crime; (d) strong reason to believe the suspect is in the premises being entered; (e) the likelihood that a delay could cause the escape of the suspect or the destruction of essential evidence; and (f) the safety of the officers or the public jeopardized by delay.

Once the exigent circumstances that justified the warrantless search no longer exist, the right to conduct a warrantless search also ends. Below are three of the most common types of exigent circumstances you are likely to encounter.

- ✓ Hot Pursuit - *Warden v. Hayden* and *United States v. Santana*
- ✓ Destruction or Removal of Evidence
- ✓ Emergency Scene - The need to protect or preserve life typically justifies actions that would otherwise violate the Fourth Amendment.

Michigan v. Fisher (2009)

Officers do not need ironclad proof of "a likely serious, life-threatening" injury to invoke the emergency aid exception.

Moreover, even if an officer does not subjectively believe, that

Fisher or someone else was seriously injured, the test is NOT what Officer Goolsby believed...but whether there was "an objectively reasonable basis for believing" that medical assistance was needed, or persons were in danger.

Middletown v. Flinchum (2002)

The Ohio Supreme Court held that officers who have identified themselves and who are in hot pursuit of a suspect may enter the suspect's house without a warrant to arrest him, regardless of whether the offense for which he is arrested is a felony or misdemeanor.

Consent Searches

It is ... well-settled that one of the specifically established exceptions to the requirements of both a warrant and probable cause is a search that is conducted pursuant to consent (Schneckloth v. Bustamonte).

When a LEO obtains a valid consent to search a given area or object, neither reasonable suspicion, nor probable cause, is required. In situations where you have some evidence of illicit activity, but lack probable cause to arrest or search, a search authorized by valid consent may be the only means of obtaining important and reliable evidence. Consent may be expressly sought from and given by a suspect (e.g., "Do you mind if we search your vehicle?").

The Requirements for a Consent Search

There are two requirements for a consent search to be valid: (1) the consent must be voluntarily given, and (2) the consent must be given by an individual with either actual or apparent authority over the place to be searched.

Voluntariness - The Fourth Amendment requires that consent not be coerced, by explicit or implicit means, by threat or covert force. Any consent provided must be given voluntarily, and not as a result of duress or coercion. Courts look at the totality of the circumstances surrounding a grant of consent, analyzing all the circumstances to determine whether it was voluntary or coerced.

Consent will not be valid if it is given after you falsely assert an independent right to make the search. For example, consent given only after you assert that you have a warrant is not truly voluntary in that you are “announcing in effect that the [individual] has no right to resist the search.” (Bumper v. North Carolina).

Actual or Apparent Authority - The second requirement is that the consent must be given by an individual with either actual or apparent authority over the place to be searched. Actual authority comes “from the individual whose property is searched”. (Illinois v. Rodriguez). A third-party “who possesses common authority over or other sufficient relationship to the ... effects sought to be inspected” has actual authority to consent to a search. United (States v. Matlock).

The consent of one party who has authority over the place to be searched, however, is not valid if another party with authority is present and expressly refuses to give consent for the search. You are not required to attempt to locate any or all of those who might

have authority over the premises to determine whether they are willing to consent to search; however, you may not isolate or remove the potentially non-consenting party just to avoid a possible objection to the search (*Georgia v. Randolph*).

The Scope of a Consent Search

“The standard for measuring the scope of a suspect’s consent under the Fourth Amendment is that of ‘objective’ reasonableness – what would the typical reasonable person have understood by the exchange between the officer and the suspect?” (*Florida v. Jimeno*).

An individual may limit the scope of any consent by saying something like, “You may search here but not there.” You must honor such a limitation. An individual may also revoke consent. When consent is revoked, you are required to stop searching, unless another exception to the Fourth Amendment’s warrant requirement (e.g., probable cause to search a vehicle) is present.

Use of Force

LEOs will use non-deadly force far more frequently than they will use deadly force. The constitutional standard for using any force, whether deadly or not, is the Fourth Amendment standard of “objective reasonableness.” In *Graham v. Connor*, the Supreme Court made clear that the right to make an arrest or investigatory stop necessarily carries with it the right to use some degree of physical coercion or threat thereof to affect it.

There is No “Perfect Answer” when Using Force

The Supreme Court explained in *Graham* what standard courts should use to determine if the use of force was reasonable:

Based on a “totality of circumstances”... the reasonableness of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than the 20/20 vision of hindsight... As in other Fourth Amendment contexts, however, the reasonableness inquiry in an excessive force case is an objective one: the question is whether the officers’ actions are objectively reasonable in light of the facts and circumstances confronting them, without regard to underlying intent or motivation....

Not every push or shove, even if it may later seem unnecessary in the peace of a judge’s chambers, violates the Fourth Amendment. The calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split second judgments - in circumstances that are tense, uncertain, and rapidly evolving - about the amount of force that is necessary in a particular situation.

Factors to Consider in Determining Whether Excessive Force was Used

In *Graham*, the Supreme Court emphasized four key factors that courts will examine when determining what level of force is justified in a use of force encounter:

- ✓ Severity of the crime
- ✓ Whether the suspect is an immediate threat to the safety of the officer or others. (This is the most important single factor.)

- ✓ Whether the suspect is actively resisting arrest, or
- ✓ Is attempting to evade arrest by flight.

Using Handcuffs Does Not Automatically Convert a Seizure into an Arrest

Because safety may require you to temporarily freeze a potentially dangerous situation, using handcuffs may be reasonable during a Terry stop. Handcuffing a suspect does not transform a Terry stop into a full custodial arrest, provided the use of handcuffs is reasonably necessary to assure the safety of officers or bystanders. Handcuffing can be a reasonable attempt to restrain a suspect as long as the officer can articulate a reasonable factual justification for the restraint.

For instance, pointing a firearm at and handcuffing a suspect can be reasonable when a suspect matches the description of an armed and dangerous suspect. In *United States v. Vargas*, 369 F. 3d 98 (2d Cir. 2004) officers had reliable information that Vargas was carrying a weapon. Vargas had demonstrated his unwillingness to cooperate by fleeing from the police when first contacted and continuing to struggle with one of the officers after he was stopped. Immediately upon intercepting Vargas, the officer placed him in handcuffs and conducted a pat-down search for weapons, which revealed a concealed firearm. The court held that the level of force used was reasonable under the circumstances, and that Vargas was not arrested until the discovery of the firearm.

Pointing a Weapon at a Suspect Does Not Automatically Convert a Seizure into an Arrest

As with the use of handcuffs, there is no rule that pointing guns at people constitutes an arrest. Instead, the use of guns in connection with a stop is permissible when you reasonably believe such action is necessary for your protection. Courts have held that intrusive and aggressive police conduct is not an arrest when it is a reasonable response to legitimate safety concerns on the part of the investigating officers. *United States v. Miles*, 247 F.3d 1009 (9th Cir. 2001).

“Officer Safety” as a Reason for a Particular Use of Force

Simply stating that a particular use of force, such as handcuffing, pointing a weapon, or using a baton or chemical spray on a suspect, was done for “officer safety” is not sufficient. “Officer safety” is the conclusion that you reach when presented with facts that lead you to believe that your safety is a concern, or is in jeopardy. You must be able to **articulate specific facts**, since these facts will be used to judge your particular use of force. For example:

“I handcuffed and frisked the suspect because he had a bulge in his jacket pocket and he would not keep his hand out of that pocket after being told to do so”... **NOT**... “I handcuffed and frisked the suspect for officer safety.”

Verbal Warnings Are Not Always Required Before Deadly Force Can Be Used

If feasible to do so, giving a warning before using deadly force may help make the force reasonable. A warning is not required before every use of deadly force, and nothing mandates that the warning

be verbal.

You Need Not Exhaust All Lesser Forms of Force before Using Deadly Force

You are not required to exhaust all lesser forms of force before resorting to deadly force. However, even when deadly force is authorized, you can always use a lesser amount of force.

You Have No Duty to Retreat before Using Deadly Force

You are under no legal duty to retreat before using deadly force. Of course, there is no rule preventing you from retreating should you consider it best to do so. There may be sound tactical reasons for disengaging and retreating to cover, and you are not legally required to remain in place.

Agency Policy Restrictions

The Fourth Amendment sets a minimum standard for the use of deadly force. Agency policies often intentionally restrict the use of deadly force greater than the Constitution permits. Thus, it is possible to lawfully use deadly force in accordance with the Constitution, yet still violate a policy. Policy violations may result in administrative discipline. However, while agency policies are relevant to the analysis of constitutionally excessive force, they do not automatically establish civil liability. The courts will use the standard of reasonableness as defined by Graham and Scott to decide if an officer violated a suspect's constitutional rights.

Smith v. Freland

In *Smith v. Freland*, the Court even went on to say, "We must avoid substituting our personal notions of proper police procedure for the instantaneous decision of the officer at the scene. We must never allow the theoretical, sanitized world of our imagination to replace the dangerous and complex world that policemen face every day. What constitutes reasonable action may seem quite different to someone facing a possible assailant than to someone analyzing the question at leisure."

Scott v. Harris, 550 U.S. 372 (2007)

A decision by the United States Supreme Court involving a lawsuit against a sheriff's deputy brought by a motorist who was paralyzed after the officer ran his eluding vehicle off the road during a high-speed car chase. The driver contended that this action was an unreasonable seizure under the Fourth Amendment. The case also involved the question of whether a police officer's qualified immunity shielded him from suit under Section 1983. The court sided with police and ruled that a "police officer's attempt to terminate a dangerous high-speed car chase that threatens the lives of innocent bystanders does not violate the Fourth Amendment, even when it places the fleeing motorist at risk of serious injury or death. "

Citizens Use of Force/Self-Defense in Ohio

Ohio Revised Code 2307.601 No duty (for Citizen) to retreat in residence or vehicle [Civil Liability Statute]

(B) If the person lawfully is in that person's residence, the person

has no duty to retreat before using force in self-defense, defense of another, or defense of that person's residence, and, if the person lawfully is an occupant of that person's vehicle or lawfully is an occupant in a vehicle owned by an immediate family member of the person, the person has no duty to retreat before using force in self-defense or defense of another.

Ohio Attorney General's Concealed Carry Law Handbook

Page 18: Ohio's concealed carry laws **DO NOT** regulate "open carry" of firearms. If you openly carry, use caution. ***The open carry of firearms is a legal activity in Ohio.***

A citizen in Ohio does NOT need a permit of any type, to openly carry a firearm, as long as he is legally allowed to possess it in the first place. While open carry is not a routine activity in Ohio as it is in other states (citizens in Texas, Arizona, and New Mexico commonly open carry), it is never the less legal, and officers must ensure they do not violate such a right.

Miranda and 5th Amendment

The Supreme Court created a rule specifically for custody situations because of the additional pressures that a suspect may face to incriminate himself. In ***Miranda v. Arizona*** the Court said that statements from custodial interrogation of a defendant cannot be used at trial unless police protect his rights by giving certain warnings. Failure to follow this "procedural safeguard," even for statements that are otherwise voluntary, can lead to suppression. Therefore, prior to questioning a defendant in custody must be told

the following:

- ✓ He has the right to remain silent;
- ✓ That any statement he does make may be used as evidence against him;
- ✓ That he has a right to consult with an attorney and to have the attorney present during questioning; and,
- ✓ That if he cannot afford an attorney, one will be appointed to represent him prior to questioning.

After the warnings are given, an individual may waive these rights and agree to answer questions or make a statement, if he does so voluntarily, knowingly and intelligently.

Miranda Warnings – When Required

Miranda applies only when there is both custody and interrogation by known law enforcement authorities. The combination of these things creates the police-dominated atmosphere that concerned the Supreme Court. Should one of these factors be absent, however, then the situation is not one that requires Miranda warnings.

Interrogation - Interrogation is the act of asking investigative types of questions where the answer could incriminate the suspect. It does not include such things as requesting consent to search a person or car, as these seek only permission and not information that could be used against the suspect.

Interrogation under the Miranda rule includes not only actual investigative questioning, but also any functional equivalent of questioning. In *Rhode Island v. Innis* the Supreme Court said that

Miranda applies whenever a person in custody is subjected to interrogation, i.e., either express questioning or its functional equivalent. The functional equivalent of interrogation means words or actions by law enforcement that are designed to bring an incriminating response from the suspect. For example, police engaging in a lengthy monologue in the presence of an in custody suspect might be considered an interrogation.

Custody - Custody requiring Miranda warnings exists when law enforcement officers arrest or otherwise deprive a person of his freedom of action in a significant way. Courts will consider a suspect to be “in custody” whenever there is a restraint on freedom of movement to the degree associated with a formal arrest, even when there is no arrest. (California v. Beheler).

A Fourth Amendment seizure does not necessarily render a person “in custody” for purposes of Fifth Amendment Miranda. This is most evident in a Terry stop. Generally, officers are not required to read Miranda to question a suspect during an investigative detention, even though he is not free to leave. While both “seizure” in the Fourth Amendment sense and “custody” in the Miranda sense involve the restraint of a person’s freedom to walk away from the police, the critical difference is that Miranda “custody” arises only if the restraint on freedom is to the degree associated with formal arrest.

The following situations have generally been held not to be custody for Miranda purposes:

- ✓ *Traffic Stops.* Routine traffic stops are not custodial and

therefore do not require Miranda warnings.

- ✓ *Terry Investigative Stops.* Generally, like traffic stops, Terry stops do not require warnings because they are not considered to be “custody.”
- ✓ *Search Warrants.* In general, detaining the occupant of a home during the execution of a search warrant is not considered “custody” for Miranda purposes.
- ✓ *Police Station Questioning.* Non-custodial questioning may take place in a police station even when the questioned person is one whom the police suspect. In *Oregon v. Mathiason*, Miranda warnings were not required because the defendant was not subjected to “custodial interrogation” when he voluntarily came to the police station and gave a statement. The defendant was immediately informed that he was not under arrest. A noncustodial situation is not converted to a Miranda situation simply because the questioning takes place in a “coercive environment.”
- ✓ *Intent to Arrest.* An unexpressed or unarticulated future intent to arrest is not Miranda custody. The relevant inquiry is how a reasonable person in the suspect’s position would have understood his situation. In *Stansbury v. California* the Supreme Court said that an officer’s undisclosed belief that the person he interrogates is a suspect is irrelevant to whether he is in custody. The need to give Miranda warnings arises only when there is a formal arrest or restraint on freedom of movement to the degree associated with a formal arrest.
- ✓ *Incarcerated Persons.* Individuals who are serving prison sentences are not necessarily in “custody” for Miranda purposes. Some type of additional restraint must be imposed

on an inmate to transform the interview into a “custodial interrogation.”

Ohio Constitution Provides Greater Protection – Miranda

In *State v. Farris (2006)*, a state trooper pulled over 21-year-old Stephen Farris for speeding and detected a “light odor” of burnt marijuana in the passenger compartment when he approached the vehicle. The trooper ordered Farris to get out of his car. The trooper found no drugs or drug-related items during a pat-down body search. The trooper took Farris' car keys and ordered him to get into the front seat of the patrol car. Without administering Miranda warnings, the officer then asked Farris why his car smelled like marijuana. The trooper then told Farris that he was going to search the trunk of his car, and asked if it contained any drugs or drug paraphernalia. Farris replied that there were no drugs, but there was a pipe and some cigarette papers in a bag inside a piece of luggage.

“It was not necessary for Farris to be under arrest in order for him to be “in the custody” of the trooper for Miranda purposes when he was questioned. “Officer Menges patted down Farris, took his car keys, instructed him to enter the cruiser, and told Farris that he was going to search Farris's car because of the scent of marijuana. Farris was not free to leave the scene – he had no car keys and reasonably believed that he would be detained at least as long as it would take for the officer to search his automobile. ... We hold that a reasonable man in Farris's position would have understood himself to be in custody of a police officer as he sat in the cruiser.”

“We believe that the overall administration of justice in Ohio requires a law-enforcement environment in which evidence is gathered in

conjunction with Miranda, not in defiance of it.” *State v. Farris*, 2006-Ohio-3255

Identifying a Valid Miranda Waiver

Once an individual taken into custody has been given the proper Miranda warnings, there is one more requirement before any interrogation. Prior to questioning, the suspect must make a voluntary, knowing and intelligent waiver of his rights under Miranda.

Voluntary - For a waiver to be valid, a suspect must voluntarily give up his Miranda rights. It must be the product of a free and deliberate choice, without any intimidation, coercion, or deception. Just as a suspect should not be pushed into making a confession, he must also not be pushed into waiving the rights provided by Miranda. The waiver must be voluntary, and any statements after the waiver must also be voluntary (getting a valid waiver, by itself, does not guarantee the voluntariness of a statement).

Intelligent and Knowing - The waiver must also be intelligent and knowing. It should be made with a full awareness of both the right being waived and the consequences of waiving it. For the waiver to be considered knowing, a suspect should be given the complete Miranda warnings, start to finish.

Failure to fully give Miranda warnings (and obtain a waiver) will make any statements obtained from custodial interrogation inadmissible at trial. Therefore, officers should advise suspects of their Miranda warnings by reading the warnings directly from a Miranda rights card or agency form, if possible, to ensure full

compliance.

Trickery or deception should **never** be used when advising a suspect of the Miranda warnings or when obtaining a Miranda rights waiver. Any evidence that the defendant was threatened, tricked, or pushed into a waiver will cause the courts to find the privilege was not voluntarily waived. Deception can still be employed, however, after a valid waiver, as a tactic for obtaining statements.

Form of Waiver

If a suspect waives the Miranda rights orally, but refuses to sign the waiver form, it is still a valid waiver. A suspect could also agree to give only an oral statement, but not a written statement. He can even waive only as to certain questions, but not others.

Miranda Rights May Be Inferred – Ohio’s Ruling

In *State of Ohio v. Lather*, (2006), the Supreme Court of Ohio held that when a criminal defendant has been advised of his Miranda rights but police have not directly asked if he understands and waives those rights, an understanding waiver of rights may be inferred from the **totality of the circumstances**.

Pointing to this Court's decisions in *State v. Foust* (2004) and *State v. Murphy* (2001), Justice Lanzinger said those and other cases have held that a waiver of rights could be inferred “from the suspect's behavior, viewed in light of all the surrounding circumstances” even if an express statement of understanding or waiver of rights is lacking. She noted that, the Foust court in assessing the totality of circumstances found it significant “that the

suspect appeared to be mentally alert, that he was not under the influence of drugs or alcohol at the time of the interview, and that he stated during the police interview that he had completed a GED course and had the highest score in his class.”

“On the day he was detained at his apartment, Lather was 26 years old. He was well educated. ... Lather testified that he was familiar with the Miranda warnings. He had a criminal record and a number of contacts with law enforcement. He had been read his Miranda warnings two weeks before, had signed a form stating that he understood his rights and wished to waive them, and then had given a statement to police. On the day he was detained at his home, Lather was sober and did not ask for a further explanation or protest that he did not understand his rights. The statements that he did make were intended to exculpate him or at least lessen his culpability. From this evidence of the totality of the circumstances, the trial court could infer that a valid waiver of Lather's Miranda rights had occurred.”

“Although it may not seem overly burdensome, and perhaps would be better practice, for law enforcement officers to ask specifically whether a suspect understands his or her rights, Miranda does not require it,” wrote Justice Lanzinger. (*State of Ohio v. Lather, 2006*)

Miranda Violations

Unintentional Violations - What happens in a situation where a suspect makes a statement after an unintentional violation of Miranda, such as when an officer simply forgets to read the warnings? In *Oregon v. Elstad* the Court said that giving Miranda warnings to a suspect who previously gave an unwarned (but

voluntary) statement is enough to overcome the problem. Therefore, if more statements are made or repeated after the Miranda warnings, they will be admissible at trial. In general, the courts will prevent just the use of any statements given before the warnings.

Intentional Violations - In contrast, in *Missouri v. Seibert* the Court held that when officers intentionally question without Miranda warnings as a tactic to gain a confession, it effectively threatens Miranda's purpose. Here, there was an unwarned confession, followed by a statement made after Miranda warnings. Neither one could be used against the defendant because of the officers' efforts to get around the rule.

After Miranda Rights are Invoked

Right to Counsel - When a suspect invokes his right to an attorney, he cannot be subjected to further interrogation unless he himself re-initiates the contact, or counsel is actually present (such meetings should be coordinated through the prosecutor). In *Davis v. U.S.* (1994), the Court said that a suspect must make it clear without ambiguity when he wants to claim the right to counsel after getting Miranda warnings.

Right to Silence - If a suspect asserts the right to silence, questioning must stop, but officers may attempt to re-approach the suspect after a "cooling off" period. In *Michigan v. Mosley* police gave full Miranda warnings to the defendant and began to question him. When the defendant asserted his right to silence, the police suspended the questioning for more than two hours. They then re-approached the defendant to begin a new line of questioning. The defendant was given Miranda warnings again, and he waived his

rights before this second interrogation started. The Court found this to be an acceptable practice, and the statements could be used at trial.

Suspect MUST Invoke Their Right to Remain Silent - In *Berghuis v. Thompkins*, (June 2010) the U.S. Supreme Court, for the first time made two things clear about Miranda rights: first, if a suspect does not want to talk to police — that is, to invoke a right to silence — he must say so, with a clear statement because it is not enough to sit silently or to remain uncooperative, even through a long session; and, second, if the suspect finally answers a suggestive question with a one-word response that amounts to a confession, that, by itself, will be understood as a waiver of the right to silence and the statement can be used as evidence.

Police need not obtain an explicit waiver of that right. The net practical effect is likely to be that police, in the face of a suspect's continued silence after being given Miranda warnings, can continue to question him, even for a couple of hours, in hopes eventually of getting him to confess. *Berghuis v. Thompkins*, (June 2010)

Another new and important ruling from the high court states: "If the State establishes that a Miranda warning was given and that it was understood by the accused, an accused's uncoerced statement establishes an **implied** waiver". *Berghuis v. Thompkins*, (June 2010)

The implied waiver means officers need only to ensure the suspect understands his rights. LEOs can infer a waiver "from the actions and words of the person interrogated." *North Carolina v. Butler* (1979)

14 Day Rule for Miranda

In *Maryland v. Shatzer*, (Feb 24, 2010) the U.S. Supreme Court added a new rule: “A break in Miranda custody of fourteen (14) days provides ample time for the suspect to get re-acclimated to his normal life, to consult with friends and family and counsel, and shake off any residual coercive effects of prior custody. If a suspect invokes counsel under Miranda while in custody and is then released, nothing prohibits law enforcement from approaching, asking questions, and obtaining a statement without the Miranda lawyer present from the suspect who remains out of custody.”

The Sixth Amendment Right to Counsel

An individual’s Sixth Amendment right to counsel attaches when the government has formally accused him with a crime, thereby initiating the adversarial process. It is not related just to custodial interrogation by known law enforcement officers, the way Miranda rights are under the Fifth Amendment. It applies to any “critical stage” of his prosecution.

Montejo v. Louisiana (May 26, 2009)

Under the *Montejo* ruling, it will now be possible for law enforcement officers to attempt to obtain a waiver and an admissible statement from a defendant without running afoul of the Sixth Amendment, even after he has been indicted or has made his first court appearance on the case and has an attorney, or has asked for one. The court imposed no time limit on this new opportunity for questioning, which could presumably occur even during pretrial

proceedings or the trial itself.

Under the rulings in *Edwards v. Arizona*, *Arizona v. Roberson*, and *Minnick v. Mississippi*, the separate Miranda right to counsel might preclude getting an admissible statement if the defendant is in custody. Once a custodial suspect has invoked his Miranda "right" to counsel, police can no longer obtain a valid waiver for police-initiated interrogation as to any crime, as long as the person remains in continuous custody.

Ohio Revised Code 2935.20 - Right to counsel

After the arrest, detention, or any other taking into custody of a person, with or without a warrant, such person shall be permitted forthwith facilities to communicate with an attorney at law of his choice who is entitled to practice in the courts of this state, or to communicate with any other person of his choice for the purpose of obtaining counsel. Such communication may be made by a **reasonable** number of telephone calls or in any other reasonable manner. Such person shall have a right to be visited immediately by any attorney at law so obtained who is entitled to practice in the courts of this state, and to consult with him privately. **No officer** or any other agent of this state shall prevent, attempt to prevent, or advise such person against the communication, visit, or consultation provided for by this section.

Whoever violates this section shall be fined not less than twenty-five nor more than one hundred dollars or imprisoned not more than thirty days, or both. Effective 11-1-65.

Ohio Public Records Law - Sunshine Laws

The Ohio Public Records Act is built on centuries of American legal tradition that the records of government are “*the people’s records.*” The Public Records Act provides the public with procedures to request records from any public office in Ohio, while protecting certain specific types of records from release. It also establishes a legal process to enforce compliance when a requester feels that a public office has failed to satisfy its public records obligations.

Any person can make a request for public records by simply asking a public office or person responsible for the public records. Usually, the request can be made in any manner the requester chooses: by phone, in person, or in an email or letter. The requester cannot be required to identify him- or herself, or to explain why the records are being requested, unless a specific law requires it.

Unless a specific law says otherwise, a requester does not have to give the reason for wanting the records, give their name, or make the request in writing, but the request does have to be clear and specific enough for the public office to reasonably identify what public records are being requested.

Criminal Investigation Reference Lists

The investigative reference lists are only meant to be guidelines for LEOs to use. They are tips and reminders to increase the effectiveness of criminal investigation efforts and are not meant to be exhaustive lists. There are many other tips, techniques, and resources to consider, as well as departmental policies that a LEO may be required to follow. LEOs should *NOT* blindly follow any checklist, as they might miss valuable evidence not included in such a list.

Note pages following each list will allow a LEO to add their own pertinent information. Consider including known suspects for each type of crime that are residing in your beat or community. List other tips and techniques you have found to be useful or other information relevant to that investigation field.



Crime Scene Investigation

Based on the type of incident and the complexity of the scene, the LEO in charge determines what specialized resources are required.

- Look after victims and arrest suspects still on scene. The safety of people takes priority over evidence. Not any evidence that may have been disturbed while attending to victims or suspects.
- Ensure that scene security and entry and exit documentation are recorded when necessary (especially death investigations).
- Conduct a walk through with the victim (if possible without compromising evidence).
- Assess the need for additional personnel. Additional personnel may be needed in cases with multiple scenes, victims, witnesses, or other circumstances.
- Assess forensic needs and request the assistance of forensic specialists at the scene for their expertise and/or equipment.
- Identify and separately interview everyone at the scene.

DOCUMENT THE SCENE

- A well-documented scene ensures the integrity of the investigation and provides a permanent record for later evaluation. It also assists in the final written report and court testimony.
- Consider what documentation techniques are needed including notes, photographs, sketches, videos, and measurements.
- Photograph victims, suspects, witnesses, crowds, and vehicles in the area. Suspects commonly return to some types of scenes and stand with onlookers or volunteer for search parties.
- Photograph crime scene starting with the outside of buildings and working your way inside. Take photos that cover the overall view and work your way in with medium and close up shots of evidence.

- Photograph the evidence collected with and without a measurement scale and/or other evidence identifiers.
- Photograph any additional perspectives, such as aerial shots and the area under a body once it is removed.
- Consider videotaping the scene as a supplement to photographs.
- Consider if a sketch is necessary to document the scene. Include measurements on the sketch as well an arrow indicating north.
- The method used to search depends on the nature of the scene and the characteristics of the crime.
- The perimeters of a crime scene may be easily defined when an offense is committed within a building. When the perpetrator takes the fruits of his crime away from the crime scene to another area, the perimeter becomes more difficult to establish.

COLLECTION OF EVIDENCE

- Methodical preservation and collection of evidence prevents its loss, destruction, or contamination.
- Conduct a careful and methodical evaluation considering all physical evidence possibilities, such as biological fluids, latent prints, and trace evidence.
- Focus first on the easily accessible areas that are in open view and proceed to the out-of-view areas.
- Select a systematic search pattern to collect evidence based on the size and location of the scenes.
- Concentrate on the most fragile evidence and work toward the least. Move from the least intrusive to the most intrusive processing and collection methods to limit evidence contamination.
- Recognize other methods that are available to locate, document, and collect evidence, such as an alternate light source, blood pattern documentation, and projectile trajectory rods.
- Establish the chain of custody for each piece of evidence.
- Secure electronically recorded evidence immediately, such as

answering machine tapes, surveillance camera videotapes, and computers from the vicinity.

- Identify and secure evidence in containers at the crime scene. This requires the LEO to label, date, and initial the container. The case number, date, time, location, and description should be included when marking the container. Different types of evidence require different types of containers, such as porous, nonporous, and crushproof. Most evidence should be placed in paper envelopes or bags.
- Package each item separately to avoid contamination and cross-contamination.
- Transport and submit evidence items for secure storage. Document chain of custody at all times.

CONDUCT A FINAL SURVEY

- A final survey of the crime scene ensures that all evidence has been collected and the scene has been completely processed before release.
- The LEO or investigator in charge walks-through at the conclusion of the crime scene investigation and ensures that the scene investigation is complete.
- Each area identified as part of the crime scene is visually inspected.
- All evidence collected at the scene is accounted for.
- Any dangerous materials or conditions are reported and addressed. Crime scene clean-up crews can be notified if required for biological fluids.
- Consider checking trash cans for missed evidence. Also check under trash bags inside the can for concealed evidence.

CRIME SCENE INVESTIGATION NOTES

Missing Child Investigation Checklist

This list is comprised from information provided by The National Center for Missing & Exploited Children. More information and resources are available from NCMEC by visiting www.missingkids.com.

- Consider activating patrol-vehicle-mounted video camera immediately after dispatch
- Interview parent(s)/guardian(s)/person who made the initial report
- Confirm the child is in fact missing.
- Verify the child's custody status.
- Identify the circumstances of the disappearance.
- Determine when, where, and by whom the missing child was last seen.
- Interview the individuals who last had contact with the child.
- Identify the child's zone of safety.
- Make an initial determination of the type of incident whether nonfamily abduction; family abduction; runaway; or lost, injured, or otherwise missing.
- Obtain a **detailed** description of the missing child, abductor, and any vehicles used.
- Secure photographs/videotapes of the missing child/abductor.
- Evaluate whether the circumstances of the child's disappearance meet **AMBER Alert criteria**
 - Child must be under the age of 18, or of proven mental or physical disability
 - Belief the child is in imminent danger of bodily injury or death
 - Must have accurate information on at least one of the following:
 - Description of child or

- Description of suspect or
 - Description of vehicle
- If the missing person does not fit the above criteria, officers should continue to exercise discretion in determining which of the many other tools available would be the most appropriate for transmitting information and photographs to other officers, the media, and the public.
- Identify and separately interview everyone at the scene.
- Obtain and note permission to search home or building where incident took place.
- Conduct an immediate, thorough search of the missing child's home, **even if the child was reported missing from a different location.**
- Evaluate the contents and appearance of the child's room/residence.
- Inquire if the child has access to the Internet.
- Ascertain if the child has a cellular telephone.
- Protect scene and area of the child's home (including the child's personal articles such as hairbrush, diary, photographs, and items with the child's fingerprints/footprints/teeth impressions) so evidence is not destroyed during or after the initial search and to help ensure items which could help in the search for and/or to identify the child are preserved. Determine if any of the child's personal items are missing.
- Extend search to surrounding areas including vehicles and other places of concealment.
- Determine if surveillance or security cameras in the vicinity may have captured information about the child's disappearance.
- Interview other family members, friends/associates of the child, and friends of the family to determine:
 - When each last saw the child.
 - What they think happened to the child.
- Review sex-offender registries to determine if individuals

designated as sexual predators live, work, or might otherwise be associated with area of the child's disappearance.

- Ensure information regarding the missing child is entered into NCIC and reported to the National Center for Missing & Exploited Children. 1-888-24-NCMEC (1-888-246-2632)

Missing Person Investigation

- Officers or other designated personnel should interview, with sensitivity, the reporting party, and any witnesses to determine:
 - That this is a missing person case.
 - If the person may be at risk – or existence of any suspicious circumstances.
 - If there is any potential crime scene area and/or potential witnesses.
- Request voluntary assistance from the family or reporting party in obtaining initial items of evidence belonging to the missing person such as:
 - Recent photograph(s) of victim. Try to also obtain an additional photograph depicting the victim smiling with their teeth showing (beneficial for assisting in dental comparison and identification)
 - Personal clothing, bedding, personal hygiene items, etc., that may contain DNA with evidentiary value.
- Any personal items that contain the missing person's scent (for search dogs).
 - Suggested items include hat, comb/brush, sock, under garments, etc., that were recently worn by the missing person and not handled by anyone else.
 - Items taken from a family laundry hamper, containing a mix of family member's clothing, will not be beneficial.
 - Such "scent articles" should be placed in a clean paper bag using a clean glove or a clean stick.

- Personal electronic devices (cell phones, or cell phone number for tracking purposes, computers, and any online resources such as: screen names, email sources, websites they may frequent, etc.)
- Besides obtaining a photograph of the missing person, additional items such as fingerprint cards obtained through community fair projects, items containing DNA samples of the missing person, or other related documents may be offered voluntarily by the family. Parents commonly keep these items even after their children are adults.
- Based upon the law, circumstances of each case and departmental policy, appropriate actions minimally include:
 - Obtaining description of missing person and entering the information into NCIC and NAMUS.
 - Broadcasting a BOLO if the person is under 21 years of age; or there is evidence that the missing person is at risk.
- Consider calling a supervisor and/or investigator to the crime scene depending on the circumstances of the disappearance.
- Thoroughly search the immediate and surrounding area in a logical and systematic manner.
 - Process any potential crime scene for evidence
 - Identify and interview potential witnesses
 - Consider using a standardized search checklist, which should include the last known location of the missing person and any likely locations where the person may have gone.
 - Consider using additional resources to assist in the search
 - Federal Bureau of Investigation (FBI)
 - Office of Emergency Services (OES)
 - Department of Justice (DOJ)
 - Search & Rescue groups
- Canvas the houses and businesses in line of sight to the offense location. Check on previously unreported suspicious activities in the neighborhood.

Burglary Investigation

Burglary is the most common felony crime that has the lowest clearance rate for property crimes. Burglary is a crime of opportunity. It is common for a victim to have previous contact with the suspect. Most burglary suspects are known to law enforcement.

The items taken are usually easily transported such as cash, jewelry, home electronics, video games, etc. The items will commonly point to the age and sophistication of the suspect.

- Consider activating the in car camera while en-route, to record possible suspects attempting to leave the area.
- Encourage the victim to refrain from moving around the premises, and explain why (to prevent destruction of evidence).
- Interview the victim to obtain useful information to begin the investigation. First by finding out what has been touched, moved, or taken.
 - Is there anything unique about the timing of the burglary? Was there a wedding, funeral, or other event known to others?
 - Were there prior attempts or successful burglaries not reported?
 - Who knows the property and location, as well as the items taken?
 - Is the property taken unique to this residence? Such as art or unique valuables not common to the neighborhood.
 - Have any other neighbors complained of suspicious people in the area? Such as possible suspects pretending to be lost, salesmen, posing as a repair man, etc.
- Pay attention to, and establish specifics of MO. Did the burglar enter through crude means or with skill? Entry gained by stealth, pry bar, breaking a window, etc. Why was this premises targeted?
- What were the burglars activities while in the premises? This includes the property stolen, the acts performed while in the premise, the time they needed to do such things.

- Establish the route taken by the offender to get into and away from the property. Did they use a bicycle instead of a vehicle? Or did they leave on foot?
- Preserve the scene including entry and exit points and all sources of evidence to include DNA, tool marks, hairs, fibers, fingerprints, shoeprints, etc. Areas to be searched should include: garbage can, items in refrigerator, toilet seat, locks, and any other item obviously touched by a suspect.
- Locate any discarded stolen property nearby. Check garbage cans, ditches, fields, and nearby areas that can easily conceal property or suspects.
- Canvas the surrounding neighborhood. At a minimum check all houses in line of sight to the victim location. Check for suspicious subjects on previous days, not just the day of the offense.
- Witnesses may include neighbors, mail carriers, delivery persons, utility meter readers, phone company repairmen, service department employees, construction workers in the area, as well as others.
 - Interview witnesses about possible suspects pretending to be lost, salesmen, posing as a repair man, etc.
- Check arrangements for securing premises.
- Check area pawn shops, garage sales, flea markets, newspaper ads, and other sources for quick resale of property.
- Look for shoe wear impressions outside where entry was made. Shoeprints may also be located on hard surfaces inside home including countertops, tables, and floors.
- Check surfaces touched by the offender to gain access for evidence; e.g. handles, doors, doorbells, doorknockers, etc.
- Check for possible video surveillance from other home owners or businesses in site of the victim residence.
- Check with local confidential sources as well as petty criminals in the neighborhood for information regarding the crime.
- It may be easier to chase the property than the suspect.

Robbery Investigation

Most robberies occur in urban areas and over 90% of them are committed by males. Most robberies are committed by strangers. Offenders display a weapon in about half of all robberies. Blacks are victimized three times more than whites; Latinos twice as often.

Average age of suspects is under 25. Most offenses involve more than one offender, but only one victim. An older offender is more likely to plan out a robbery while younger offenders make hasty or no real plans at all. The younger the offender is the more likely they are acting as part of a group or gang.

Most people do not make a good witness since the offense occurs so suddenly and without warning. There is a high degree of stress to be considered when first dealing with a victim of robbery. Their safety and any injuries should be the first priority.

- Consider activating the in car camera while en-route, to record possible suspects attempting to leave the area.
- Consider use of patrol K9 for tracking suspect.
- Pay attention to, and establish specifics of MO. Did the robber enter waving around a weapon or use the threat of force? Did he use a note instead and act with calm and clearly directed the victim? Entry gained by stealth, pry bar, breaking a window, etc. Why was this premises targeted?
- Interview victim and witnesses separately. Keep them apart while waiting to be interviewed so they do not contaminate the others accurate recollection.
 - Allow people to tell their story without interruption. When victims are constantly interrupted they remember less information than if they are allowed to speak freely. Once they are finished LEOs can then ask specific questions (i.e. suspect description, vehicle description, escape route, hand used to hold weapon, etc.)

- Ask the victim if the suspect handled any goods while in their establishment that may produce fingerprints or DNA to be swabbed.
- If the suspect struggled or assaulted the victim there may be a transfer of DNA, hairs, fibers, or other evidence.
- Find where the suspect may have walked to dust for shoe prints.
- Identify items that were stolen that can be tracked such as cell phones or credit cards.
- Canvas the surrounding neighborhood. At a minimum check all houses and businesses in line of sight to the offense location. Check for suspicious subjects involved in “casing” activities on previous days, not just the day of the offense.
- Check for possible video surveillance from other businesses or homes in site of the offense location.
- Robbery is usually a serial crime and the MO should be checked against other robberies in the surrounding jurisdictions. Robbery suspects usually have a criminal record and are known to area law enforcement officers.
- Consider why the offense was committed at this location instead of others. Check previous employee history if MO fits an “inside job”.
- Locate any discarded stolen property or evidence nearby. Check garbage cans, ditches, fields, and nearby areas that can easily conceal property or suspects. Robbery suspects may throw away masks, clothing, and gloves that can provide valuable forensic evidence.
- Contact hospitals and clinics if suspect suffered injury. Continue to check back days and weeks later.
- Check with local confidential sources as well as petty criminals in the neighborhood for information regarding the crime.
- Keep victim of offense updated throughout investigative progress.

Theft from Vehicle

- If theft in progress consider activating the in car camera while en-route, to record possible suspects attempting to leave the area.
- Identify any possible grudge if criminal damage or repeat victimization is part of the MO.
- Check all areas for possibly touched for finger and shoe prints.
- Check for tool marks to identify means of entry into vehicle. Cast tool marks for comparison if suspect tool later identified.
- Is there anything found in vehicle that is foreign to it, which could be related to the offender? Something left behind including trash could contain forensic evidence.
- Canvas the houses and businesses in line of sight to the offense location. Check on previously unreported suspicious activities in the neighborhood.
- Identify stolen property that can be tracked: cell phones, credit cards, stereos and other items with serial numbers.
- Is the stolen property unique to this vehicle? Who knew of the property and the location?

Motor Vehicle Theft

- If theft in progress consider activating the in car camera while en-route, to record possible suspects attempting to leave the area.
- Check other vehicles close by to see if another stolen vehicle was left in place/swapped out for the victim's vehicle.
- Canvas the houses and businesses in line of sight to the offense location. Check on previously unreported suspicious activities in the neighborhood.

- Identify stolen property that can be tracked: cell phones, credit cards, stereos and other items with serial numbers.
- Identify any possible grudge if criminal damage or repeat victimization is part of the MO.
- Once vehicle is recovered check all possible areas touched for finger and shoeprints. Suspects commonly sit on hoods and lean against fenders to show off their “trophy”. Always check these areas for finger and palm prints.
- Look for items the suspect may have discarded, such as food wrappers and receipts. These items may provide forensic evidence or previous locations of suspects. Store and restaurant receipts can lead LEO to possible video surveillance of suspect.
- Check for recently stolen license plates that may be used on stolen vehicle. These vehicles and plates may be used in other crimes and can provide another means of suspect identification.
- Check with insurance company for recently upgraded policy or other unique circumstances that may point to fraud.

MOTOR VEHICLE THEFT NOTES

Sexual Assault Investigation

The LEOs first contact with the victim is of great importance. The investigator must not assume that the victim is old enough or mature enough to cope psychologically with the offense. The LEOs interest in the victim and a concern for the victim's welfare are factors in the victim's future cooperation.

- If rape in progress, consider activating the in car camera while enroute, to record possible suspects attempting to leave the area.
- During the initial contact with the victim, the LEO must instill confidence in the victim that he/she is qualified to investigate the offense. Victim's will be in a crisis mode and have enough causing them worry.
- Be sincere and display true concern for the victim's situation. Explain to the victim what is being done and why. When there is enough information to enable other personnel to begin crime scene processing, the victim must be taken quickly to the nearest medical facility for a thorough examination. Detailed questioning of the victim can be done later to get leads and information related to the offense.
- Pay attention to, and establish specifics of MO. Did the robber enter waving around a weapon or use the threat of force? Did he use a note instead and act with calm and clearly directed the victim? Entry gained by stealth, pry bar, breaking a window, etc. Why was this premises targeted?
- Ensure that a victim's advocate has been notified and made available if the victim wishes for one.
- Medical personnel must examine all victims as soon as possible because the value of serological evidence is reduced by delay. A lot of physical evidence on a victim and at a sexual-assault crime scene is fragile and special care must be taken to protect it.
- Explain that the clothing worn during the attack must be examined for evidence, and make arrangements for the victim to obtain a change of clothing.

- Find out by whom, in what setting and manner, and to what extent the victim has been questioned about the offense by family or friends. This allows LEOs to show consistency in the victim's statement.
- Check crime scene for anything discarded by the suspect including towels or clothing containing semen, condoms, bed sheets, and the victim's discarded clothing. Check the sinks and toilets for biological fluids from the suspects attempt to cleanup.
- Check for other forensic evidence indicating the presence of the suspect and the victim as with other criminal offenses. Obtain samples of any beverages consumed by the victim or suspect to test for "date rape" type drugs.
- Canvas the houses and businesses in line of sight to the offense location. Check on previously unreported suspicious activities in the neighborhood.
- Review sex-offender registries to determine if individuals designated as sexual predators live, work, or might otherwise be associated with area. Also check convictions for voyeurism, importuning, child pornography, public indecency, and other related crimes.
- A parent or guardian should be with the child and present during the examination. Explain very tactfully that an examination is needed for the investigation. Advise them that it should be shown by medical opinion that the offense did take place.
- When checking leads, keep in mind that sex crimes do not just have one type of a suspect. Anyone can commit a sex offense. Think of the unusual. Whoever had the chance to commit the crime can be suspect. This is in spite of an excellent reputation, law abiding past, or high station in life.
- If leads do not develop elsewhere, check MO offenses or sex offender files. Try to identify individuals who have committed similar crimes or other sex crimes or who have used similar criminal methods.

Interview & Interrogation

Years of research and experience have clearly established that criminals are more likely to confess to someone they like, trust, and respect than to someone who does not allow them to retain their dignity. Additionally, rapport-based interview techniques provide LEOs with greater protection against obtaining false confessions than more confrontational styles.

When questioning a suspect for the first time, if the investigator is not reasonably certain of guilt, an interview is the preferred investigative tool. During this process, a suspect will be asked questions about his actions during the time of the incident. Investigators should obtain detailed descriptions of the individual's activities for the periods of time before, during, and after the crime occurred. By obtaining this information, investigators will be able to determine the accuracy of any alibis and whether or not there is evidence that is in conflict with the purported actions of the suspect.

It is important to position tables and chairs in a manner that does not allow a table to become a physical barrier once the interrogation begins. The LEO should be able to visually observe the suspects entire body to observe nonverbal responses. This will allow the LEO to assess if any indications of deception are present.

Signs of verbal deception include the following:

When analyzing verbal responses, there are specific reactions that will assist investigators in recognizing truthful and deceptive responses. It is important to remember that these reactions are just general guidelines, but they are effective and accurate most of the time. The accuracy of these reactions depends on the mental and physical state of the suspect. Specific reactions are as follows:

Truthful response. Suspects generally answer questions with direct and spontaneous answers. Speech clarity, rate, and pitch are more understandable and smoother than that of a guilty suspect. Although

truthful suspects will sometimes use clipped word endings to emphasize their innocence and your understanding, such as, "I...did not...do it," they will much more frequently use contractions, which are more free flowing, such as "I didn't do it."

Deceptive response. Suspects normally delay in answering questions by using vocalized pauses, asking for questions to be repeated, answering with vague responses, or repeating questions before providing answers (some people do this out of habit). Evaluation for these behaviors should begin during the opening stages of the interview and continue during nonthreatening questions. This will help to delineate between someone employing deceptive practices and someone reacting out of habit.

It is extremely important to note that assessing verbal and nonverbal responses for indicators of deception is accomplished by evaluating clusters of behavior. One or two observed behaviors do not necessarily mean that the person is practicing deception; however, a constant comparison of responses and reactions to nonthreatening and threatening questions is essential to this process.

Former FBI Agents researched and authored verbal deception of suspects including text bridges. The FBI Law Enforcement Bulletin is a good resource for interrogation techniques as well as other valuable skills. The following information comes from that research and experience.

Text bridges enable the people to fast forward through time connecting notorious events without discussing the included activities. A suspect who is reluctant to tell the truth often uses this same technique to gloss over sensitive topics. Some commonly used text bridges include "I don't remember...," "the next thing I knew...," "later on...," "shortly thereafter...," "after-wards...," "after that...," "while...," "even though...," "when...," "then...," "besides...," "consequently...," "finally...," "how-ever...," and "before...."

A LEO should listen for text bridges and make a note to question the suspect further about the information they have left out.

Stalling phrases include “It depends on what you mean by that,” “Where did you hear that?” “Where’s this information coming from?” “Could you be more specific?” or “How dare you ask me something like that.” The phrases “Well, it’s not so simple as yes or no,” or “That’s an excellent question,” also provides speakers with additional time.

Responses such as, “I would never do that,” “Lying is below me,” “I have never lied,” or “I would never lie,” or, “I would never do such a thing” should alert investigators to the possibility of deception. Other statements such as: “to be perfectly frank...,” “to be honest...,” “to be perfectly truthful...,” or “I was always taught to tell the truth,” often intend to deceive.

Signs of non-verbal deception include the following:

An innocent person will generally sit upright, appearing more relaxed and casual. In most cases, he will go as far as to lean toward the interviewer inviting the questions and demonstrating an eagerness to resolve the issue.

Physical movements. Initial contact and the introduction of nonthreatening questions will allow the interviewer to observe the natural movement of the interviewee's hands. As the interview progresses, the interviewer can observe if there is any change in the smooth, fluid motion of the interviewee's hands when asking threatening questions.

A guilty person will appear to be stiffer and more rigid. He may lean back in his chair or slouch. He will generally avoid a frontal alignment with the interviewer, which presents a closed posture. The crossing of arms or legs, holding elbows close to the body, or tucking legs under the chair are good indicators of a deceptive person. They may also point their feet toward the door unknowingly

signaling they want to leave. Normally, these body positions will change frequently and be very erratic.

Gestures. Certain gestures are good indicators of deception. Investigators should look for the following two basic types of gestures:

Grooming gestures. Examples of grooming gestures are when a person removes lint from his clothing, rubs or wrings his hands, taps his fingers on a tabletop, scrapes at the surface of the tabletop with his fingernails, or rearranges his clothes or jewelry.

Supportive gestures. Supportive gestures are when a person places his hands over his mouth or eyes when speaking, places his hands or fists under his chin, holds his forehead with his hands, or places his hands under or between his legs.

All of these bodily reactions and postures occur as a subconscious protection mechanism and are generally more consistent with deception than truthfulness. They are the result of a guilty person subconsciously attempting to release the stress and anxiety of lying. In these cases where verbal and nonverbal responses do not complement one another, the physical responses are typically more reliable than the verbal responses.

Facial expression. This is another subtle indicator of deception. A guilty person may use a variety of facial expressions resulting from fear of detection. The variation of facial expressions may be suggestive of untruthfulness or the lack of such variation may be suggestive of truthfulness. Truthful individuals should exhibit expressions that coincide with the subject of the conversation and should not be obviously exaggerated. Deceptive individuals tend to feign shock, surprise, or overly exaggerate emotional responses.

Alternative Question

John Reid & Associates as well as other groups who train officers in Interview & Interrogation programs promote the use of alternative questions. They are a very effective method of interrogation even if the LEO is conducting the interrogation on the street.

In the alternative question the LEO may choose to present the suspect with two incriminating choices for committing the offense under investigation: "I investigate these cases and the horrible people who do these things on a regular basis. They plan these things out and enjoy hurting people. So I wanted to see if you're the type who planned this out or was it done on the spur of the moment?" Either choice is an admission of guilt but one choice feels more socially acceptable and allows the suspect to "save face."

The alternative question simply offers the suspect a "good" or desirable reason versus a "bad" reason for committing the offense. It tells the suspect that the LEO believes they did it for the "good" reason and they are not as "bad" a person as certain others are . The idea is for the LEO to provide the suspect with a psychological justification for committing the offense.



Law Enforcement Officer's Prayer

Heavenly Father, protect me as a guardian of your justice and mercy, that I may overcome evil and restore peace in the world.

Bestow upon me the courage to face the troubles of our society as a source of comfort and strength.

Inspire me to become an instrument of peace and a ray of hope to those who are hurting.

Strengthen my resolve that I may show bravery in the midst of evil, compassion to those in need, and integrity in everything I do.

Finally, I pray for you to watch over my family as I serve our society.

~Amen



"...Police must obey the law while enforcing the law" because "in the end, life and liberty can be as much endangered from illegal methods used to convict those thought to be criminals as from the actual criminals themselves."

Spano v. New York, (1959)



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