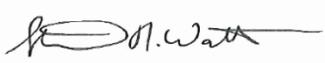


OGDEN CITY POLICE

Office of the Chief

Policy No: 39

Subject Constitutional Law	Effective Date February, 2018
Department Police	Replaces Policy Dated February, 2006
Division All Police Personnel	Review Date February, 2020
Authorized Signature 	

NOTE: This rule or regulation is for internal use only, and does not enlarge an officer's civil or criminal liability in any way. It should not be construed as the creation of a higher standard of safety or care in an evidentiary sense, with respect to third party claims. Violations of this directive, if proven, can only form the basis of a complaint by this agency, and then only in a non-judicial administrative setting.

I. PURPOSE

This policy ensures Officers of the Ogden Police Department have sufficient knowledge of Constitutional Law enabling them to protect the Constitutional rights of those with whom they interact as part of their official duties. Constitutional Law is a thread connecting all policies, laws, and ordinances, and portions of this policy may be found in other places within the Ogden Police Department's policy manual.

A. Adherence by this Department's Officers to Applicable Federal and State Laws

Investigative procedures and associate uses of police authority often implicate individual rights protected by the federal constitution, state constitution and various state laws. In order to investigate effectively and lawfully, officers must understand the relationship between the police authority and individual rights, particularly in certain critical situations. This policy explains several of those relationships and situations. It is the policy of the Ogden Police Department that officers respect and obey the law, most particularly that which involves constitutionally protected rights.

B. Legal Considerations

While this policy is written in terms of federal constitutional law, state statute and constitutional law sometimes impose greater restrictions on police authority than imposed by the federal constitution. It is the responsibility of individual officers and supervisors to learn and obey applicable state law. Specifically, department supervisors and managers are hereby charged with the responsibility of assuring that their subordinate officers know and understand the provisions and requirements of applicable state law. If applicable state law is more restrictive of police authority than is the federal constitution and this policy, state law shall control and be obeyed by officers.

C. Training Issues

This policy covers a number of subjects that have been dealt with in basic and in-service training received by this department's employees over a period of many years. Also, such training has covered many related matters that are not discussed in this policy. In the event that any officer believes that any ongoing departmental training is inconsistent with this policy, he shall immediately report this belief to his immediate supervisor, who shall assure that the department's training manager is informed promptly of the concern. The department's training manager will research the training in question and make appropriate adjustments if warranted.

II. DEFINITIONS

- A. Arrest: Actual restraint of the person arrested or submission to custody. The person shall not be subjected to any more restraint than is necessary for his arrest and detention.
- B. Interrogation: Any words or conduct on the part of police, other than those normally attendant to arrest and custody, that the police should know are reasonably likely to elicit an incriminating response from the suspect.
- C. Investigative Detention: A seizure of a person that is reasonably brief, is generally conducted in one location (short movements for safety or security reasons may be permitted in an investigative detention,) and that involves no more force or restraint than is reasonably necessary to effect and maintain the detention safely. For purposes of this policy, the term "investigative detention" is synonymous with "investigative stop," "Terry Stop," and "field stop or interview." Investigative detention is the "stop" in a "stop and frisk."
- D. Probable Cause: Facts and circumstances which, taken together with reasonable inferences in light of an officer's training and experience and measured in terms of common sense, would establish a fair probability that:

1. To arrest - a crime has been committed and that a particular person committed it.
 2. To search - evidence of a crime or contraband is in a particular place.
- E. Reasonable Suspicion: Facts and circumstances which, taken together with reasonable inferences in light of an officer's training and experience and measured in terms of common sense, would cause an officer to suspect that:
1. To stop - a person has been, is, or is about to be, involved in a criminal activity.
 2. To frisk - a person is armed with a quickly accessible weapon and constitutes a danger to the officer.

This is often referred to as "articulable suspicion."

- F. Search: A police action that infringes upon a person's reasonable expectation of privacy.
- G. Seizure of a Person: Contact by an officer with a citizen in which the officer's words and/or actions would cause a reasonable person to believe that they are not free to refuse to participate in the contact. No seizure has occurred until the person submits to a show of authority by police or until force is used by police.
- H. Seizure of Property: A significant interference by an officer with a possessory interest in property.
- I. Voluntary Contact: Contact by an officer with a citizen in which the officer's words and/or actions would cause a reasonable person to believe that they are free to refuse to participate in the contact.

III. INVESTIGATIVE PROCEDURE

This information is not a complete substitute for needed training. Rather, it is a guide to a number of critically important principles that may be addressed in training as well.

- A. Investigative Contacts/Seizures of Persons

There are three forms of investigative contacts: voluntary contact, investigative detention, and arrest. Investigative detentions and arrests are seizures of persons and require special factual justification.

1. Voluntary contact is permitted without probable cause or reasonable suspicion. It can be a highly effective investigative tool and is unlikely to cause evidence suppression or civil liability. Therefore, it is the preferred form of contact, where circumstances permit.
2. Investigative detention may be conducted only if there is at least reasonable suspicion of criminal activity on the part of the person to be detained. Patterned, "check point" type stops generally do not require reasonable suspicion.
 - a. Use of force and/or restraints is permitted only if reasonably necessary to effect or to maintain safety in an investigative detention.
 - b. Involuntary movement of a detained person from one place to another is prohibited except for short distances reasonably necessary for safety and/or security. Generally, such movement will be permitted only within one locale, or area, and may not involve transportation in a vehicle. If a detained person is willing to move voluntarily, or if there exists probable cause to arrest the detained person, movement is permitted.
 - c. Investigative detention shall be limited in duration to a reasonably brief period of active and diligent investigation.
3. Arrests shall be made only if there is probable cause to believe that the person to be arrested has committed a crime for which the officer has authority to arrest. Searches, processing of arrestee, and charging procedures shall be in accordance with department training and applicable state law.
4. Discontinuation of Arrest/Custody
 - a. If, following arrest but before commitment to jail custody, probable cause to arrest evaporates, because of new information or error, the officer shall release the arrestee as quickly as possible in a reasonably safe place, of the arrestee's choosing if possible. In such cases, the officer shall document the arrest, and reasons for it, as well as the release from custody, and reason for it, and shall also notify a supervisor of those transactions as quickly as possible.
 - b. If, after commitment of an arrestee to jail custody, an officer discovers new information, and/or realizes an error which

causes probable cause to evaporate, the officer will immediately consult with a supervisor and with the appropriate prosecutor's office in order to determine the procedure for causing the release of the arrestee. The officer and supervisor will proceed diligently in an effort to effect the prompt and lawful release of the arrestee from custody.

5. Juveniles will be seized and handled only as is permitted by applicable state law and the Ogden City policy on juveniles.

B. Interrogation Procedure

1. Threats, intimidation, physical abuse and/or deprivation, promises of reward, and other similar coercions are prohibited in connection with interrogation.
2. Officers will advise arrestee of those rights prescribed in *Miranda v. Arizona* prior to any effort to interrogate. Interrogation may proceed only if the arrestee waives Miranda rights. A waiver occurs when a person in custody clearly indicates an understanding of the rights and a willingness to answer questions without an attorney present and the officer is satisfied the waiver was intelligently made. That is to say that the suspect is not in such a state of mind as to not be aware of where they are or what is taking place.
 - a. Miranda warnings are not required for non-custodial interrogation and therefore will not be given in such circumstances. For purposes of this subsection, "non-custodial" means that police have not said or done things that would cause a reasonable person to believe that he is not free to leave, or is being detained.
 - b. Interrogation of juveniles will be conducted only as permitted by applicable state law and this department's policy on juveniles.
 - c. Re-warnings of Miranda rights shall be given only under circumstances which warrant reasonable doubt that the arrestee understands that the earlier rights warning is still applicable. Re-warnings are not required following every short break in interrogation. Examples of circumstances, which might warrant re-warnings, include: complete change of interrogators, change of interrogation site, a break of more than a few hours, etc.
 - d. Certain types of questions by police do not require Miranda warning and waiver although they might elicit incriminating information. They are:

- (1) Routine booking and processing questions attendant to arrest and custody.
 - (2) General, on-scene, questioning of persons present at the scene of a crime to ascertain what may be happening.
 - (3) Questions during traffic stops.
 - (4) Questions asked out of urgent necessity to dispel an imminent threat to public safety.
- e. Miranda warnings and waivers need not necessarily follow any particular, precise language or phrasings. Officers shall assure, however, that Miranda warnings clearly convey the following messages:
- (1) You have the right to remain silent.
 - (2) Anything you say can and will be used against you in court.
 - (3) You have the right to a lawyer to assist you prior to and during any questioning.
 - (4) If you want a lawyer but cannot afford one, one will be appointed to represent you at no cost to you prior to any questioning.
- f. Prior to in-custody interrogation, the officer must receive clear affirmative response to the following questions:
- (1) Do you understand these rights?
 - (2) Are you willing to answer questions now without a lawyer present?

3. Procedure Following Assertion of Rights

- a. Assertion of right to silence by in-custody suspect: In this event, officers shall cease all interrogation efforts immediately and attempt no further interrogation on any matter, for a minimum of two hours of honoring the request to remain silent, or until the suspect initiates new discussion with police of his involvement in criminal activity. Then, an officer may attempt to obtain a waiver of rights using standard Miranda warnings and waiver procedures. (If the suspect is no longer in custody, there is no requirement of a Miranda warning and waiver. The suspect's choice to meet and talk with police will show his waiver.)
- b. Assertion of Fifth Amendment (Miranda) right to counsel by in-custody suspect: In this event, officers shall cease all interrogation efforts immediately and no officer will attempt any further interrogation on any matter unless or until:
 - (1) Counsel is actually present at any subsequent interrogation.

- (2) The suspect initiates new discussion with police regarding the formally charged crime.

C. Search and Seizure

Searches and seizures of persons, places, and property are regulated by the Fourth Amendment to the United States Constitution. The guiding principle of the Fourth Amendment, and therefore of the law of search and seizure, is "reasonableness." Any search and/or seizure that is not "reasonable" under the "totality" of the circumstances violates the Fourth Amendment and is unconstitutional. Officers shall strive carefully and energetically to assure that their actions are at all times "reasonable." To this end, a working definition of "reasonable" is offered. A police action is "reasonable" if there are good, lawful, reasons for it.

1. The Warrant Requirement

Searches and seizures generally require a search warrant in order to be reasonable. If an officer should need to obtain a search warrant, the officer shall notify a supervisor who will arrange for any assistance that the officer may require. The formal issuance, execution and service of search warrants is regulated by state statutory law. Also, state law may require warrants for certain arrests, even though the arrest is made outside private premises. Officers and supervisors will assure that applicable state law regarding warrants is carefully followed.

2. Exceptions to the Warrant Requirement

Some search and seizure actions do not require warrants but are nevertheless subject to strict legal requirements and procedural rules. Following is a summary of those requirements and rules:

- a. Frisk: This is a limited, "pat-down" type, protective search of outer clothing and quickly accessible carried belongings. It is permitted only during lawful officer-citizen contacts and only if the officer has reasonable suspicion that a person is armed and may constitute a danger to the officer or another person. If the subject is in or beside a vehicle, and if the officer reasonably suspects the presence of weapons that could be quickly reached and used against him, he may conduct a limited search of quickly accessible portions of the passenger compartment for weapons.
- b. Search incident to an arrest: This is a full search for evidence and weapons within the area of immediate access of an

arrestee. It is permitted pursuant to every lawful arrest and must be conducted contemporaneously with the arrest. Probable cause to arrest is required but the search may be conducted whether or not there is any reason to believe evidence and weapons will be found.

- (1) The search may extend to the person, his clothing and carried belongings, and the area to which he has immediate access. If the subject is seized from a motor vehicle, the search may extend to the accessible portions of the passenger compartment, even if, by the time of the search, the subject has been removed from the vehicle and secured.
 - (2) Strip searches or body cavity searches will not be done by members of the Ogden Police Department unless authorized by court order and approved by the duty officer.
 - (3) In the event that an arrestee wants or needs access to certain areas for his convenience and comfort, the officer shall inform the arrestee that such access is conditional upon the arrestee's consent to a prior search by the officer of the areas which access is requested. If the arrestee consents, the appropriate search will be conducted. If consent is withheld, the arrestee will not be allowed the requested access. These strict rules are absolutely necessary for officer protection and survival as well as the safety of the arrestee and others.
 - (4) Arrestee will be handcuffed before transportation. Handcuffing will precede searches, except if immediate frisk is required by circumstances, in which case handcuffing will occur as quickly thereafter as possible.
- c. Impound inventory: This inventory is permitted pursuant to the lawful impoundment of a person's property by action or order of police. In this department, it will likely occur in the context of a police ordered towing of a person's vehicle. The inventory allows discovery and proper care taking of dangerous instrumentalities and of valuable or important property, and it enables the department to defend successfully against false claims of theft or property loss. It is the policy of this department that all vehicles, and other property, which are impounded, be searched and inventoried. In the case of vehicles, such search and inventory will extend to all areas and containers within the vehicle that can be opened and accessed without breakage or damage.

- d. Plain view search: This seizure of property is permitted when an officer who is lawfully present in an area sees in plain view an item that the officer has probable cause to believe is contraband or other evidence of a crime, and that can be seized without any additional privacy intrusion.
(Example: An officer lawfully present on the street may not use this rule to force a warrantless entry into a home in which the officer can see, through an uncurtained front window, a marijuana cigarette being smoked. Such an entry requires an additional privacy intrusion. Said another way, the officer is not lawfully present in the place from which the seizure can be accomplished.)
- e. Probable cause search of a motor vehicle in a public area: This search is permitted when an officer has probable cause to believe that evidence of a crime is in an apparently operable motor vehicle that is in a public area. No additional or exigent circumstances are required and the search may extend to any area within the vehicle that could reasonably contain the evidence sought. Closed containers may be opened and searched if there is probable cause to believe they contain evidence of a crime. Breakage is permitted if reasonably necessary to reach criminal evidence. For purposes of this subsection, "public area" is any area on which public vehicular traffic is normally permitted, i.e. streets, highways, grocery or mall parking lots, apartment complex parking lots, etc.
- f. Consent search: This search is permitted when, during a lawful officer-citizen contact, a person who has a reasonable expectation of privacy in an area voluntarily grants permission for police to search that area. This search does not require probable cause or reasonable suspicion but is limited to those areas "reasonably" within the consent. (Example: During a lawful stop, an officer asks a vehicle operator for permission to search the car for drugs. Permission to search is granted. Unless the driver objects or withdraws consent, the consent search may extend to any containers within the vehicle that can be opened without breakage.) Consent may be withdrawn at any time; if it is withdrawn, the officer will immediately stop the search, unless by that time there are other lawful search justifications.
- g. Open fields and woods/abandoned property: Certain areas, though sometimes on private property, do not involve a reasonable expectation of privacy. An officer may inspect, without a search warrant, the contents of trash receptacles in common areas of multi-tenant commercial or residential premises. An officer may pick up and examine the contents

of items or containers that are apparently discarded in public areas. Whether or not there is an expectation of privacy depends on all circumstances surrounding a particular situation. In general, the closer an officer gets to a single-family residence, the greater are privacy expectations and the more likely it is that probable cause or a search warrant will be required. However, if an officer uses common, regularly used public pathways to reach the front door of a residence in order to make an inquiry, the officer has not intruded upon any reasonable expectation of privacy; no justification is required for such an action.

D. Other Actions

Investigative actions and uses of authority that are not dealt with explicitly in this, or any other policy, will be conducted, if at all, in strict compliance with departmental training, applicable state laws, state constitution, and federal constitutional requirements. Officers will consult with their supervisors regarding any questions that may arise. Officers and supervisors will contact the department training officer, the Ogden City Attorney, or the Weber County Attorney if questions have not been answered clearly and appropriately.