Stop, Arrest, and Search of Persons	Related Policies:
This policy is for internal use only and does not enlarge an employee's civil liability in any way. The policy should not be construed as creating a higher duty of care, in an evidentiary sense, with respect to third party civil claims against employees. A violation of this policy, if proven, can only form the basis of a complaint by this department for non-judicial administrative action in accordance with the laws governing employee discipline.	
Applicable Vermont Statutes: Vermont Constitution Chapter 1 Article 11	
Date Implemented:	Review Date:

I. **Purpose:** The purpose of this policy is to direct the members of this agency on the lawful limits of authority with respect to contacts with persons.

II. **Policy:** The policy of this department is to protect and serve the constitutional rights of all citizens when stopping, arresting or searching individuals while balancing the needs of law enforcement in solving crime for the protection of the community.

III. **Definitions:**

A. **Probable Cause (search):** Facts and circumstances based upon observations or information that would lead a reasonable law enforcement officer to believe that evidence of a crime exists and that the evidence exists at the place to be searched.

B. **Probable Cause (arrest):** Facts and circumstances based upon observations or information that would lead a reasonable law enforcement officer to believe that a crime has been or is being committed and the person to be arrested is the one who is or has committed the crime.

C. **Reasonable Grounds:** As used in this policy reasonable grounds shall have the same meaning as probable cause.

D. **Reasonable Suspicion (temporarily detain):** Facts and circumstances based upon observations or information, short of probable cause but based upon articulated facts that would lead a reasonable law enforcement officer to believe that criminal activity is afoot.

E. **Reasonable Suspicion (frisk):** Facts and circumstances based upon observations or information, short of probable cause but based upon articulated facts that would lead a reasonable law enforcement officer to believe that a person who is lawfully stopped is in possession of a weapon.

F. **Frisk (weapon):** A limited type of search where an officer may only conduct a search for weapons. With respect to a person such a search is limited to a pat-down of the subject's outer-clothing.

G. **Strip search:** The removal or rearrangement of clothing that results in the exposure or observation of a portion of the genitals, the buttocks or the breasts of a female.

H. **Consensual Contact:** An interaction between a member of law enforcement and the public that is voluntary in nature. The law enforcement member has shown no authority that would cause a reasonable person to believe that they had no choice but to respond or comply with the officer's efforts. Under this type of contact an officer has no power to detain an individual who chooses not to participate in the contact.

I. **Arrest:** An arrest is the taking of a person into custody so that he may answer for the commission of a crime.

   a. To constitute an arrest there must be:

      i. An intent by the officer to take the person into custody, and

      ii. A corresponding understanding by the person that he or she is in custody.

J. **Felony (Vermont):** Any offense whose maximum term of imprisonment is more than two years, for life or which may be punished by death is a felony. Any other offense is a misdemeanor.

IV. Procedures:

A. Consensual Contact - An officer may approach anyone and attempt a consensual contact.

   a. Officers are not required to have reasonable suspicion for this type of contact.

   b. Officers may not take any steps through words or conduct to stop the person's movement under this type of stop.

   c. A person cannot be compelled in any way to participate in the stop.

B. Reasonable Suspicion Based Stops/Terry Stops-An officer who is aware of facts and circumstances that would lead a reasonable police officer to conclude that criminal activity is afoot, may stop a person, using reasonable force short of deadly force, and detain the person for a reasonable amount of time to investigate further.

C. Reasonable Suspicion Based Frisk - An officer may conduct a limited frisk/pat-down of a person's outer clothing when the officer has reasonable suspicion to believe that a person who has been lawfully stopped is in possession of a weapon that poses a danger to the officer or others present.

   a. Items that may support reasonable suspicion:

      i. The type of crime for which the stop is based is one that would lead a reasonable officer to conclude generally involves a weapon.

      ii. The officer observes a bulge in the subject's clothing that has the appearance of a weapon.

      iii. The officer has information (anonymous tip merely providing description and location is not enough) indicating that a person is armed.

      iv. The officer is aware of the subject's history of carrying weapons.

      v. The officer observes the subject reach as if reaching for, or reaching to hide, a weapon (furtive movements).

   b. The frisk is limited to a pat-down of the outer-clothing and does not include reaching into pockets etc. unless the officer feels an item during the frisk that the officer reasonably believes is a weapon.

D. Arrest: An officer may arrest an individual if the officer has probable cause to believe that a crime has been committed and probable cause to believe that the person to be arrested is the person who committed that crime. Once probable cause is established an officer may take custody of the subject and involuntarily transport the subject.

a. **NOTE:** If the person to be arrested is in a dwelling-refer to Home Search Policy/ If the person to be arrested is in a vehicle-refer to Vehicle Search Policy.

E. Under Vermont Law:

a. Arrest Without a Warrant for a Felony Offense. -- A law enforcement officer may arrest without a warrant a person whom the officer has probable cause to believe has committed or is committing a felony.

b. Arrest Without a Warrant for a Misdemeanor Offense Committed in the Presence of an Officer. -- A law enforcement officer may arrest without a warrant a person whom the officer has probable cause to believe has committed or is committing a misdemeanor in the presence of the officer. Such an arrest shall be made while the crime is being committed or without unreasonable delay.

c. Nonwitnessed Misdemeanor Offenses. -- If an officer has probable cause to believe that a person has committed or is committing a misdemeanor outside the presence of the officer, the officer may issue a citation to appear before a judicial officer in lieu of arrest. The officer may arrest the person without a warrant if the officer has probable cause to believe:

i. The person has failed to provide satisfactory proof of identity.

ii. Arrest is necessary to obtain nontestimonial evidence upon the person or within the reach of the person, including an evidentiary test for purposes of determining blood alcohol content.

iii. Arrest is necessary to prevent the continuation of the criminal conduct for which the person was detained, to prevent harm to the person detained or harm to another person.

iv. The person has no ties to the community reasonably sufficient to assure his or her appearance, or there is a likelihood that he or she will refuse to respond to a citation.

v. The person has previously failed to appear in response to a citation, summons, warrant, or other court order issued in connection with the same or another offense.

vi. The person has violated an order issued by a court in this state pursuant to 12 V.S.A. chapter 178, 15 V.S.A. chapter 21, or 33 V.S.A. chapter 69 or subsection 5115(e).

vii. The person has violated a foreign abuse prevention order issued by a court in any other state, federally-recognized Indian tribe, territory or possession of the United States, the Commonwealth of Puerto Rico or the District of Columbia.

viii. The person has committed a misdemeanor which involves an assault against a family member, or against a household member, as defined in 15 V.S.A. 1101 (2), or a child of such a family or household member.

ix. The person has abused, as defined in 33 V.S.A. 6902 (1), , a vulnerable adult, as defined in 33 V.S.A. 6902(4), or a minor child of a vulnerable adult.

x. The person has violated 23 V.S.A. 1201 (operating a vehicle under the influence), and has a prior conviction under section 1201.

xi. The person has violated a hate-motivated crime injunction issued pursuant to chapter 33 of Title 13.

xii. The person has violated a condition of release that relates to:

(a) a restriction on travel, including curfew;

(b) the operation of a motor vehicle; or

(c) direct or indirect contact or harassment of a victim or potential witness.

xiii. The person has violated 13 V.S.A. 1062 (stalking).

xiv. The person has violated 13 V.S.A 1023 (simple assault).

xv. The person has violated 13 V.S.A. 1025 (recklessly endangering another person).

xvi. The person has violated 13 V.S.A. 1304 (cruelty to children under ten by one over 16).

xvii. The person is a sex offender who has failed to comply with the provisions of subchapter 3 of chapter 167 of Title 13 (sex offender registration and notification).

d. Persons under the Supervision of the Commissioner of Corrections. -- A law enforcement officer may arrest without a warrant a person under the supervision of the commissioner of corrections:

i. pursuant to 28 V.S.A. 301, if the person is on probation and a correctional officer believes the person has violated a condition of his or her probation; or

ii. pursuant to 28 V.S.A. 363, if the person is serving a supervised community sentence, and a correctional officer believes the person has violated a condition of his or her supervised community sentence; or

iii. pursuant to 287 V.S.A. 551, if the person is on parole, and a correctional officer believes the person has violated a condition of his or her parole; or

iv. pursuant to 28 V.S.A. 808, if the person is on furlough, and the law enforcement officer or a correctional officer believes the person has violated a condition of his or her furlough.

e. Continuation of Custody for Felony Offenses. -- A person who has been arrested without a warrant for a felony offense may be continued in custody unless the charge for which the arrest was made is reduced to a misdemeanor, and none of the exceptions in subsection (c) of this rule apply.

f. Continuation of Custody for Misdemeanor Offenses. -- A person who has been arrested without a warrant for a misdemeanor offense shall be released on citation if:

i. none of the exceptions in subsection (c) of this rule apply; or

ii. the arrest was made pursuant to an exception in subsection (c) of this rule, and the conditions or reasons for which the exception applied no longer exist and no other exception applies.

g. Appearance Before a Judicial Officer. -- A person arrested without a warrant and not released on a citation shall be brought before the nearest available judicial officer without unnecessary delay. The information and affidavit or sworn statement required by Rule 4(a) of these rules shall be filed with or made before the judicial officer when the arrested person is brought before the judicial officer.

h. Discretionary Issuance by Prosecuting Officer. -- A prosecuting officer may issue a citation to appear to any person whom the officer has probable cause to believe has committed a crime. The citation shall be served as provided for service of summons in Rule 4(f)(1) of these rules. Probable cause shall be based upon the same evidence required for issuance of a summons or warrant under Rule 4(b) of these rules.

i. Form. -- The citation to appear shall be dated and signed by the issuing officer and shall state the name of the person to whom it is issued and the offense for which he or she would have been arrested or continued in custody. It shall direct the person to appear before a judicial officer at a stated time and place.

j. Filing Citation and Information with Judicial Officer. -- A copy of the citation to appear, signed by the issuing officer, and the information and affidavit or sworn statement required by Rule 4(a) ofof the Vermont Rules of Criminal Procedure shall be filed with or made before the judicial officer at the time for appearance stated in the citation.

k. Temporary Release. -- A law enforcement officer arresting a person shall contact a judicial officer for determination of temporary release pursuant to Rule 5(b) of the Vermont Rules of Criminal Procedure without unnecessary delay.

F. Search Incident to Arrest of a Person:

a. When an officer arrests a person on the street, the officer shall conduct a thorough search of the subject's person (not strip search) and the subject's immediate area of control. When an arrest occurs in a vehicle, the vehicle search provisions shall apply. When the arrest occurs in a dwelling the dwelling search policy provisions shall apply.

b. Cross-gender pat-downs and searches are restricted to those circumstances where exigent circumstances are present and no officer of the subject's gender is available to conduct the search. Exigency includes cases where no person of the same gender is immediately available and the safety of the officer or other persons present is in jeopardy.

c. The purpose of this search is the following:

i. Protecting the officer from attack;

ii. Preventing the person from escaping;

iii. Discovering or seizing the fruits of the crime for which the person has been arrested; or

iv. Discovering or seizing any instruments, articles, or things that are being used or which may have been used in the commission of the crime for which the person has been arrested.

d. This search may include the subject's clothing.

G. Privilege from Arrest:

a. Diplomatic and Consular Immunity

i. Background. Diplomatic immunity is a principle of international law by which certain foreign government officials are not subject to the jurisdiction of local courts and other authorities for both their official and, to a large extent, their personal activities. It should be emphasized, however, that even at its highest level, diplomatic immunity does not exempt diplomatic officers from the obligation of conforming with national and local laws and regulations.

ii. Categories of persons entitled to diplomatic immunity are as follows:

(a) Diplomatic Agent: Enjoys the highest degree of privileges and immunity. Diplomatic Agents may not be handcuffed (except in extraordinary circumstances), arrested or detained for any criminal offense. Generally, they are immune from any civil suits, but are not immune from receiving a citation/summons. Family members of these persons enjoy the identical privileges and immunity.

(b) Diplomatic Administrative and Technical Staff: Enjoy privileges and immunity similar to Diplomatic Agents. Diplomatic Administrative and Technical Staff may not be handcuffed, arrested or detained for any criminal offense. They enjoy immunity from civil suits arising in connection with the performance of their official duties. Officers may issue a citation for a motor vehicle violation. Family members enjoy identical privileges or immunity.

(c) Diplomatic Service Staff: They are accorded few privileges and immunities. Diplomatic Service Staff may be arrested or detained for criminal offenses. They enjoy immunity from civil suits arising in connection with the performance of their official duties. Officers may issue a citation for traffic violations. Family members enjoy no privileges or immunities.

(d) Consular Officers: Enjoy privileges and immunity from criminal and civil matters arising from their performance of official duties. Consular Officers may be arrested or detained, pursuant to an arrest warrant, for felony offenses. They may be prosecuted for misdemeanors, but may not be arrested or detained prior to trial or other disposition of charges. Officers may issue a citation for traffic violations. Generally, family members enjoy no privileges or immunity.

(e) Consular Employees: Enjoy privileges and immunity from criminal and civil matters arising from their performance of official duties. Consular Employees may be arrested or detained for criminal offenses. Officers may issue a citation for traffic offenses. Family members enjoy no privileges or immunity.

(f) Honorary Consuls: Enjoy privileges and immunity from criminal and civil matters arising from their performance of official duties. Honorary Consuls may be arrested or detained for criminal offenses. Officers may issue a citation for a traffic offense. Family members enjoy no privileges and immunity.

b. Procedure for Notification When a Foreign National is arrested.

i. Determine the foreign national's country. In the absence of other information, assume this is the country on whose passport or other travel documents the foreign national travels.

ii. All foreign nationals must be told of their right to Consular notification.

iii. If the foreign national's country is not on the mandatory notification list:

(a) Offer, without delay, to notify the foreign national's consular officials of the arrest/detention.

(b) If the foreign national asks that consular notification be given, notify the nearest consular officials of the foreign national's country without delay.

iv. If the foreign national's country is on the list of mandatory notification countries:

(a) Notify that country's nearest consular officials, without delay, of the arrest/detention. Tell the foreign national that you are making this notification

v. Keep a written record of the provision of notification and actions taken.

c. Vermont Exemptions from Arrest:

i. The governor, lieutenant governor, state treasurer, secretary of state, auditor of accounts, attorney general and members of the general assembly and officers and witnesses whose duty it is to attend thereon, in all cases except treason, felony and breach of the peace, shall be privileged from arrest and imprisonment during their necessary attendance on and in going to and returning from the general assembly.

ii. A party or witness in a cause pending in any court in the state or before special masters, auditors, referees or commissioners, and a witness in a criminal case pending in any such court, shall not be arrested, imprisoned or detained by virtue of civil process. Any witness summoned from without the state in a criminal cause, pending in any court within the state, shall be privileged from the service of papers of any kind whatsoever, and from arrest for any cause while going to, attending at or returning from such court or trial of such cause.

H. Strip Search: In order to conduct a strip search of an individual two threshold issues must be met:

a. The person must first be arrested based upon probable cause to believe that person has or is committing a crime.

b. Field: The officer must have probable cause to believe that the arrestee is concealing evidence, contraband or weapons on their person. These searches shall be conducted at the police station or jail, unless exigent circumstances exist that make the search necessary to protect the officer or others from serious bodily

harm or death. In such a case, the officer shall obtain supervisory authorization before making this search, unless no supervisor is available. In all cases the officer must seek a private area to conduct the search which is out of view of the public and other persons.

I. Booking: Strip searches during the booking process may only be conducted when an officer can articulate reasonable suspicion to believe that the subject is concealing weapons or contraband.

a. All strip searches conducted shall be performed by persons of the same sex as the arrested person, in a professional manner, and on premises where the search cannot be observed by persons not physically conducting the search.

b. Officers performing strip searches must obtain the permission of a supervisor for the purpose of authorizing the strip search.

c. In all cases where a strip search has been conducted, the officer will document the following:

i. The name of the person searched;

ii. The person who conducted the search;

iii. The supervisor who authorized the search;

iv. The offense the suspect was arrested for;

v. Facts and circumstances that led the officer to believe that the suspect was hiding weapons or contraband on his or her person;

vi. The manner in which the search was conducted;

vii. The persons who were present during the search;

viii. The location where the search occurred;

ix. The items that were recovered as a result of the search.

J. Body Cavity Searches: No search of any body cavity other than the mouth shall be conducted without a duly executed search warrant. Any warrant authorizing a body cavity search shall specify that:

a. The search must be performed under sanitary conditions;

b. The search must be conducted by or under the supervision of a physician licensed to practice medicine in all branches in this state.

Passed and Adopted by the Selectboard of the Town of Randolph, Vermont this 14th day of April, 2016.

Trini Brassard

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Marjorie Ryerson

Ross Evans

Jerald Ward, M.D.

Michael Hildenbrand

RANDOLPH TOWN CLERK'S OFFICE
Received for Filing
April 15 A.D. 2016
at 8 o'clock 30 minutes AM
Attests Joyce L Magnusson
Town Clerk