

St. Joseph, Missouri Police Department



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| SUBJECT: Limits of Authority/Protection of Civil Rights/Use of Discretion | | |
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I. Policy

The purpose of this policy is to establish guidelines for arrest, search, and seizure decisions by Department members to ensure that they are made in a manner consistent with City, State, and Federal Laws and constitutional guidelines. Members are required to recognize and comply with those rights granted to individuals by the United States Constitution and case law that impact the Department.

II. Procedure

A. Oath of Office:

1. Upon employment by the City of St. Joseph, and in order to **assume sworn status**, each new member shall be administered the "Oath of Office" by the City Clerk or other authorized official.
2. Upon receiving the Oath of Office, each new member shall execute a sworn affidavit, as provided by the City Clerk or other authorized official, agreeing to: support the Constitution of the United States and the State of Missouri; comply with the laws of the City of St. Joseph; and faithfully discharge the duties of "Police Officer".
3. All members will abide by a Code of Ethics adopted by the Department. (See GO0113 "Department Code of Ethics")

B. Legal Authority:

1. Sworn members are state certified peace officers possessing the power of arrest, search, and seizure, as well as the power to carry and use weapons in the performance of their duties.
2. Members shall at all times exercise their authority in a fair and impartial manner so as to safeguard the constitutional rights of the persons with whom they come into contact, while enforcing the law to enhance public safety.
3. Supervisors shall be cognizant of situations that might be perceived as a violation of civil rights and take appropriate action.

C. Interviews, Interrogations:

1. Members will treat individuals being interviewed or interrogated fairly and objectively. No statements or confessions will be taken in a manner that violates their constitutional rights.
2. Whenever a person is arrested, or becomes a suspect in a criminal investigation, thereby reasonably believing that they are no longer free to leave, "Miranda Warnings" SHALL BE GIVEN PRIOR to any questioning designed to elicit a self-incriminating response. The warnings may be given at the time of custody but must be given prior to interrogation.
3. A written Rights Waiver Form shall be utilized during a formal in-custody interview/interrogation.
4. In a field situation, Miranda Warnings may be given verbally.
5. **Miranda Warnings must be positively acknowledged by the suspect as being understood and those rights clearly waived prior to interrogation.**
6. In the event that a suspect waives his/her rights but refuses to sign a waiver form, the member will document an explanation of the waiver and may then interrogate the suspect.
7. In the event that the suspect invokes his/her rights at any point, all interrogation must cease. Interrogation may not be reinitiated except in accordance with case law in effect at the time.
8. **Suspects** who have an insufficient command of the English language, in that they may not clearly understand their rights, or the questions being asked them, shall be provided with an interpreter by the Department prior to any **interrogation**. A **subject/witness** may also be provided with an interpreter prior to any **interview**, when appropriate (i.e., a routine traffic stop would not necessarily warrant the need for an interpreter).
9. There may be occasions when a member believes that a **suspect** to be interrogated may not understand his/her rights due to a level of intoxication or other impairment. In such situations, the member shall confirm that the suspect understands his/her rights through interactive questioning, prior to any **interrogation**. When appropriate, similar standards may apply when attempting to **interview** a **subject/witness** who may be intoxicated.
10. Members should make note of any UNSOLICITED statements made by a suspect/potential witness either in custody or in the field. In UNSOLICITED situations, members are under no obligation to provide the suspect(s) with any advice to stop or to stop him/her for the purpose of advising the suspect(s) of his/her rights.
11. **If a member has any questions concerning a suspect's rights, he/she shall immediately contact a Supervisor.**
12. **Access to Counsel:** Prisoners charged with a crime will be arraigned in a timely manner. Prisoners will not be denied access to legal counsel (See also SO0104 "Detention Management and Operations").

D. Pretrial Publicity:

Press releases relative to arrest or detention of a suspect will be made in accordance with the guidelines set forth under the General Orders governing Detention

Operations and Media Relations (SO0104 “Detention Management and Operations” and GO0002 “Public Information”).

E. Searches and Seizures:

1. **Search by Consent:** A member may conduct a search of persons, places, or things without probable cause when the person having legal control over the area gives consent. Consent searches shall only extend to those areas for which consent is granted and shall cease if consent is withdrawn.
2. **Frisk Resulting from a Detention:** If, during a detention, a member has a reasonable suspicion that the person is presently armed and dangerous, the member may conduct a carefully limited search of the outer clothing of the subject (for the purpose of detecting a weapon). This frisk does not require consent by the subject (See also GO0011 “Stop and Frisks, Field Interviews, Opposite Sex Searches, Strip Searches, and Body Cavity Searches”).
3. **Searches of Vehicles under the Movable Vehicle Exception:** Members shall be guided by the following basic principles and will be notified of changes in case law from the State and Federal courts by the Training Officer (as soon as possible after details of the law or case decision are received).
 - a. Due to the inherent mobility of a motor vehicle, the courts have historically held officers to a standard of probable cause for their searches. This means that there are some conditions under which an officer does not need a search warrant in order to search a motor vehicle. **Members may search a motor vehicle without first obtaining a search warrant under the following conditions:**
 - 1) The passenger compartment incident to, and contemporaneous with, the arrest of an occupant for fruits of the arrestable offense. (**Contemporaneous** - existing, occurring, or originating during the same time.
 - 2) Based on probable cause to believe that the mobile vehicle contains evidence of a crime or contraband. This search is only limited by the scope of where those items could be concealed.
 - 3) In the event of a detention of the driver or occupant, and the member has a basis to frisk that person, the frisk may extend into the vehicle to the areas where he/she might leap or lunge for a weapon.
 - 4) Unless the search is performed on the basis of consent, the member shall not conduct the search of a motor vehicle without a search warrant unless there is a clear exception in law to that requirement.
 - b. An inventory shall be conducted on all motor vehicles impounded by the Department. An inventory, however, should never take precedence over, or be used to replace, the above listed searches.
4. **Searches at the Scene of a Crime:**

Members will adhere to the following guidelines with respect to searches of crime scenes:

- a. If the crime scene includes a constitutionally protected area, and a possible suspect might have a reasonable expectation of privacy at the scene, it must be searched pursuant to a search warrant.
- b. **Exceptions:**
 - 1) Members may conduct protective sweeps of a crime scene for their protection prior to securing the scene pending a warrant or consent.
 - 2) The scene may be searched with the consent of a person who has the authority to give it.
 - 3) When a suspect is arrested at the crime scene, members may search the area under the immediate control of the suspect if it is contemporaneous with the arrest.
 - 4) Members may enter and search a constitutionally protected area under lawful exigent circumstances to include medical emergencies, or public safety issues such as a violent felony in progress or the reported presence of a bomb. This exception only extends to the termination of the emergency. At that point, another justification must be found.

5. Other Situations Authorized by State and Federal Law:

- a. Members may enter an open field and search it for items subject to seizure when they have reason to believe that the stated item(s) are to be found at the location. The Fourth Amendment affords no protection to open fields. An open field is the area in proximity to a dwelling.
- b. Members may search public places when they have reason to believe that items subject to seizure are at the location. The Fourth Amendment affords no protection to public places. Public places are those locations owned or controlled by public entities that are available for public use (i.e., public-park, walking trail, etc.).
- c. Members may search private locations open to the public when they have reason to believe that items subject to seizure are at that location. The Fourth Amendment affords no protection to private places open to the public. These are locations that are privately owned but are available for public use (i.e., "Shopping Mall" common area, restaurant seating area, etc.).
- d. Members may seize items that are immediately apparent as evidence when they come into view and the member is lawfully searching in connection with a crime or he/she otherwise has a right to be where he/she is at the time (i.e., parking-lot, sidewalk, etc.).
- e. Members may search abandoned property if it can be established that the owner or person in possession of the property intended to abandon it and did so freely.

6. Strip and Body Cavity Searches: See GO0011 "Stop and Frisks, Field Interviews, Opposite Sex Searches, Strip Searches, and Body Cavity Searches".

F. Arrest With/Without a Warrant:

(See also GO0012 "Arrest/Notice to Appear")

Members will be kept updated by the Training Officer concerning new decisions that add to the substantive law(s) of arrest.

1. Members may arrest anyone within their jurisdiction when:
 - a. They have knowledge of the existence of a felony warrant;
 - b. They have knowledge of the existence of a misdemeanor warrant issued within the State;
 - c. They have probable cause to believe that the person has committed a violation of City, State, and/or Federal Law that mandates an arrest.
 - 1) Some City codes may be copied after state infractions and are not an arrestable offense; or
 - d. They are in hot pursuit.
2. Whenever possible, the member will identify himself/herself as a police officer, and clearly advise the suspect that he/she is under arrest.
3. All arrested suspects will be searched incident to arrest, subject to provisions of State and Federal Law. The area of the suspect's immediate control may also be searched contemporaneous with the arrest. Suspects will then be transported to the Department for booking as soon as practical (See also GO0009 "Prisoner Transport" and GO0011 "Stop and Frisks, Field Interviews, Opposite Sex Searches, Strip Searches, and Body Cavity Searches").
4. Arrestees will be afforded all the rights available to them under State and Federal Law to include: the right to be considered for bond by a judge, to communicate his/her arrest to family members (entitled to one phone call) and/or to be released after 24 hours if no arrest warrant is issued.

Exception: An arrestee may be held briefly without the opportunity to communicate with persons outside the jail when that communication could represent a direct threat to members in the performance of their duties. This exception may only be exercised with the permission of a Supervisor and must be continuously reviewed for termination as soon as the threat that caused the restriction no longer exists (i.e., series of search warrants being served on felons who may be armed or violent).

G. Alternatives to Arrest:

The Department grants broad discretion to members in determining what level of action is required of them in the performance of their duties. The use of this discretion shall be based on written guidelines, training, and supervision. Furthermore, the Department recognizes that other avenues of problem solving exist in addition to the Criminal Justice System and members are encouraged to utilize these alternative avenues, when appropriate.

1. Absent the existence of an arrest warrant or a statutory provision to the contrary, members are not required to make a custodial arrest. Alternatives to arrest include:
 - a. Issuance of a Summons;
 - b. Verbal or Written Warning; or
 - c. Referral of a Case to the Appropriate Prosecutor.

Section II.G.1.a.b. above also applies to Traffic Offenses.

2. The factors that a member shall consider in deciding whether to make an arrest or select an alternative shall include:
 - a. Age and physical condition of the offender;
 - b. Attitude and safety of the victim(s), witnesses, and community;
 - c. Outstanding evidence to be recovered;
 - d. Seriousness of the charge;
 - e. Ability to positively identify the suspect;
 - f. Advisability of securing bond from the suspect (i.e.; does the suspect have a permanent address, etc.); and
 - g. Level of restraint necessary to resolve an ongoing situation.
3. Alternative resolutions to problem solving most frequently involve a referral to another agency. Such agencies include, but are not limited to, the following:
 - a. Division of Family Services;
 - b. Other Law Enforcement Agencies;
 - c. Other Service Agencies (i.e., E.O.C., Family Guidance, etc.); and
 - d. Conflict Resolution Programs (i.e., Teen Mediation at the Y.W.C.A.).
4. **Alternatives for Traffic Offenses:**

Department members have the authority to stop any vehicle on any public street or highway, or on private property. Vehicles may be stopped for the following reasons:

 - a. Any time the member has reason to arrest the driver or any occupant;
 - b. Any time a member has reasonable suspicion to believe the driver, any of the occupants, or the vehicle itself, has been involved in any criminal activity;
 - c. Any time a member has observed a violation of State or City traffic laws;
 - 1) Includes moving, non-moving, or equipment violations.
 - 2) Some violations may be cited once the vehicle is stopped, even though they were not the original basis for the stop (i.e., seat belt violations).
 - d. Arrest and bond for traffic violations should only be used in certain situations, including, but not limited to, the following:
 - 1) Driving While Intoxicated;
 - 2) Driving While Revoked/Driving While Suspended; or
 - 3) When the violator leads the member to believe, by statements or actions, that he/she does not intend to honor the court appearance date.
 - e. Things to consider in determining which option to utilize include, but are not limited to, the following:
 - 1) The severity of the violation;
 - 2) Past warnings or citations for the violation;
 - 3) Is the violation a prevalent community safety issue;
 - 4) Is the violation currently being addressed by an enforcement strategy.
5. **Alternatives During Patrol Activities:**

Members have the discretion of handling calls for service in accordance with established procedures and as the situation dictates. The following items will also be considered:

- a. The circumstances of the call;
- b. Past training;
- c. Current written policies;
- d. Supervisory guidance; and
- e. Statutory requirements.

Any uncommitted time that a member has during his/her shift will be used in furtherance of the goals of the Department (i.e., special assignments, follow-ups, traffic enforcement, seeking wanted persons, and community problem solving).

H. Pretrial Release:

1. Prisoners in custody under authority of an arrest warrant shall not be released except with permission of a judge with jurisdiction over the offense.
2. Prisoners in custody on the basis of a **warrantless/non-charged arrest** may be released (without posting bond) by:
 - a. The arresting member;
 - b. The follow-up investigator; or
 - c. Any Supervisor or Commander.
3. Relevant considerations will include:
 - a. The seriousness of the offense;
 - b. The reasons that the arrest was made; and
 - c. Jail capacity constraints.

Exception: Felony prisoners in custody on a warrantless/non-charged basis shall not be released on a discretionary basis unless the arresting member has taken responsibility for completing the case, or relevant investigating members are consulted prior to the release (See also Section II.F.4. concerning 24hr. hold in this General Order).

I. Other Arrest Requirements:

1. Members shall abide by all state statutes mandating arrests in incidents pertaining to Domestic Violence (See also GO0012 “Arrest/Notice to Appear”), as well as procedural issues involving arrests to obtain evidence to include breath and blood samples from suspected drunken drivers.
2. Members are strongly advised not to make arrests on minor charges when the sole justification is to secure bond. Those persons may be arrested upon the subsequent issuance of an arrest warrant if they fail to appear for arraignment.

Chris Connally, Chief of Police

Date