

	ROSENBERG POLICE DEPARTMENT	
	General Order 7.01 Constitutional Safeguards	
	Effective Date: 05-13-2013	Replaces: N/A
	Approved:  Chief of Police	
Reference: TBP 7.04		

I. POLICY

The federal and state constitutions guarantee every person certain safeguards from government intrusion into their lives. These safeguards have become the cornerstone for the application of criminal justice in America. The department expects officers to observe constitutional safeguards. The department further expects that officers understand the limits and prerogatives of their authority to act. Respect for the civil liberties of all persons shall be the paramount concern in all enforcement matters.

II. PURPOSE

The purpose of this general order is to define the legally mandated authority for the enforcement of laws, to establish procedures for ensuring compliance with constitutional requirements during criminal investigations, to set forth guidelines concerning the use of discretion by officers, and to define the authority, guidelines and circumstances when officers should exercise alternatives to arrests and pretrial confinement.

III. PROBABLE CAUSE AND REASONABLE SUSPICION

A. Probable Cause

1. Searches and arrests are based on the existence of probable cause. According to the U.S. Supreme Court, "Probable cause exists where the facts and circumstances within their [the arresting officers'] knowledge and of which they had reasonable trustworthy information are sufficient in themselves to warrant a man of reasonable caution in the belief that an offense has been or is being committed."

An officer must have probable cause to make an arrest or conduct a search.

2. When an officer has sufficient probable cause, he or she may arrest a person, conduct a search of the person, record the suspect's fingerprints, take the person's photograph, and detain him. The aim of an arrest on probable cause

is to make a formal charge. While in some cases, formal charges may not be filed for any number of reasons, officers should only make a custodial arrest if a formal charge is anticipated.

B. Reasonable Suspicion

1. Reasonable suspicion involves a standard less than probable cause, generally defined by the courts as a circumstance or collection of circumstances that would lead a trained, experienced officer to believe that criminal activity may be afoot.

An officer must have reasonable suspicion to temporarily detain a person.

2. When an officer has reasonable suspicion, he or she may undertake a pat-down of a suspect's outer clothing for weapons and record the circumstances of the encounter. The aim of a detention based on reasonable suspicion is to resolve an ambiguous situation and determine if criminal activity is occurring.

IV. AUTHORITY AND DISCRETION

A. Law-enforcement authority

State law invests peace officers with authority to prevent and detect crime, apprehend criminals, safeguard life and property, preserve the peace, and enforce state and local laws and ordinances.

B. The use of discretion by officers

1. While officers have the authority to arrest an offender under many circumstances, officers seldom are able to arrest individuals for every offense they observe. Officers must prioritize their activities to provide the highest level of service to their community. As a result they must often use discretion in deciding the level of enforcement action based on the circumstances.
2. Departmental policy gives officers procedures to follow for common or critical enforcement tasks. Departmental policies and procedure are to be followed unless unusual or extreme circumstances dictate another course of action. In these cases, officers shall make reasoned decisions in their discretion based on good judgment, experience, and training. It is up to the individual officer to consider the relevant facts, the situation, and then, using knowledge, training, and good judgment, make appropriate decisions. Supervisors must closely observe the use of discretion by their subordinates and point out factual errors or alternatives that may be more appropriate.
3. The vast majority of persons an officer will contact during their shift are typically law abiding people who have made a mistake or error in their

behavior. In many of these cases there are underlying circumstances that contributed to those mistakes or decisions. Officers are encouraged to exercise understanding and compassion when deciding to take enforcement action.

4. Officers should understand that their decisions regarding arrests and searches are in all cases subject to review by their supervisors.
5. Supervisors shall observe and review the activities of officers and counsel them as needed regarding the use of discretion.

C. Alternatives to arrest/pre-arraignment confinement

1. Officers are required to arrest suspects for all felony offenses and those major misdemeanor offenses where a victim was injured, property was stolen or damaged, or the public or an individual was placed at risk of great harm.

After an arrest has been made in these circumstances, if pre-arraignment detention is not advisable due to the suspect's health, age, infirmity, or family situation, the officer should contact a supervisor for disposition.

2. In misdemeanor criminal cases where there is no victim or property loss, where an individual or the public was not placed in danger of great harm, and in traffic offenses, officers may occasionally be faced with situations where formal action is not advisable. In such cases, officers may elect to exercise alternatives such as the issuance of citations, referral to a social service agency, or simply to give a warning.
3. In determining whether a citation should be used, the officer shall:
 - a. Decide whether the offense committed is serious.
 - b. Attempt to understand the contributing factors to the incident and evaluate whether a reasonable person would be influenced by those factors.
 - c. Make a judgment as to whether the accused poses a danger to the public or himself.
4. Officers often deal with situations where the public interest would be better served by social service agencies or crisis and professional organizations. When in the judgment of the officer a better solution to the problem will be achieved by use of alternatives to enforcement, he or she should refer the person to an appropriate social services agency.
5. The use of warnings may sometimes provide a solution to a problem and may enhance the public perception of the department. Normally, the use of a warning occurs in traffic offenses, but occasionally may be applied to

criminal offenses. In determining if a warning should be issued, the officer shall consider:

- a. The seriousness of the offense.
- b. Whether a victim was injured or had property damaged by the offender.
- c. Attempt to understand the contributing factors to the incident and evaluate whether a reasonable person would be influenced by those factors.
- d. The likelihood that the violator will heed the warning.

V. PROTECTION OF INDIVIDUAL RIGHTS

- A. Officers will at all times act to preserve and protect the rights of all persons.
- B. Officers making arrests will ensure suspects are informed of the rights if they intend to question them about an offense. *Miranda* warnings are required and shall be administered prior to any “custodial interrogation.” Officers are expected to understand the requirements of Code of Criminal Procedure 38.22 before taking any statements from suspects.
 1. The following represent examples of situations that are not “custodial” and do not require *Miranda* warnings.
 - a. Investigatory stop and frisk.
 - b. Questioning during a routine traffic stop or for a minor violation; to include driving while intoxicated (DWI) stops until a custodial interrogation begins. During routine questioning at the scene of an incident or crime when the questions are not intended to elicit incriminating responses.
 - c. During voluntary appearances at the police facility.
 - d. When information or statements are made spontaneously, voluntarily and without prompting by police. (Note: Follow-up questions that exceed simple requests for clarification of initial statements may require *Miranda* warnings.)
 2. Administering *Miranda*.
 - a. *Miranda* warnings shall be read by officers from the card containing this information to all persons subjected to custodial interrogation.
 - b. Officers shall ensure that the reading of the *Miranda* warning is documented.
 - c. Freelancing, recitation from memory or paraphrasing the warnings is prohibited as it precludes officers from testifying in court as to the precise wording used.

- d. Officers shall ensure that suspects understand their right to remain silent and their right to an attorney. Suspects may be questioned only when they have knowingly and intelligently waived their rights. Threats, false promises or coercion to induce suspect statements is prohibited.
- e. Waivers of the Miranda rights must be performed affirmatively. Oral waivers are often sufficient but written waivers, particularly in felony charges, are preferred and should be obtained whenever possible on the appropriate agency form.
- f. Officers arresting deaf suspects or those suspects that appear to have limited proficiency in English shall notify their immediate supervisor and make arrangements to procure the assistance of an interpreter in accordance with this agency's policy and state and federal law.