

<p style="text-align: center;"><b>East Haven Police Department</b></p> 	<b>Type of Directive:</b> <b>Policies &amp; Procedures</b>		<b>No. 427.3</b>
	<b>Subject/Title:</b> <b>Field Interviews, Observations, and Investigatory Stops</b>	<b>Issue Date:</b> September 29, 2020	
		<b>Effective Date:</b> October 1, 2020	
	<b>Issuing Authority:</b> <b>Honorable Board of Police Commissioners</b>	<b>Review Date:</b> <b>Annually</b>	
<b>References/Attachments: N/A</b>		<b>Rescinds:</b> 427.2	<b>Amends:</b> N/A

## I. PURPOSE

- A. The purpose of this directive is to set forth the policies and procedures of the East Haven Police Department (EHPD) regarding conducting field interviews, field stops, and observations.

## II. POLICY

- A. It is the policy of the East Haven Police Department for all of its members to operate within the parameters of established State and Federal laws along with judicial case law when conducting consensual encounters, field observations, investigatory stops, and frisks, to strike the correct balance among the legitimate needs of public safety and law enforcement, officer safety and the individual's constitutionally guaranteed rights.
- B. Consensual encounters, investigatory stops, frisks, and field observations are effective tactics in the mission to prevent, interrupt, detect, or intercept individuals who may be contemplating or engaged in criminal activity.
- C. Consistent with the Department's policies, officers, in deploying these tactics, shall be respectful of individual rights and be consistent with the law and judicial standards.
- D. It is the policy of the East Haven Police Department that in all consensual encounters, field observations, investigatory stops, and frisks, all persons encountered will be treated with respect and dignity, regardless of the circumstances of the stop or the social status of the individual.

### **III. DEFINITIONS**

- A. **Field Observation:** A field observation does not involve any actual contact with an individual or group. It involves an officer making observations as part of an investigative effort or as a means of gathering sufficient information or intelligence, including an individual or group's conduct, associations, and/or vehicle information.
- B. **Consensual Encounter:** A police activity that does not rise to the level of an investigatory stop or a detention where the individual is free to leave. Examples of consensual encounters include field interviews and observations.
- C. **Field Interview:** An interaction in which a police officer identifies an individual and finds out that person's business for being in a particular area. A field interview is by definition a limited consensual encounter with an individual that does not rise to the level of a formal stop and frisk.
- D. **Investigatory Stop:** Is defined as the brief detainment of an individual, whether on foot or in a vehicle, based on reasonable suspicion for the purposes of determining the individual's identity and resolving the officer's suspicions of criminal conduct. This is often referred to as a "Terry Stop," or a threshold inquiry.
- E. **Reasonable Suspicion:** Exists when an officer, based on specific and articulable facts, and the rational inferences drawn from those facts, believes that an individual has committed, is committing, or is about to commit a criminal offense. Reasonable suspicion may be based on direct observations or a combination of factors, including, but not limited to, the individual's prior criminal record, furtive conduct or flight from the police, the giving of evasive or conflicting responses to police questioning, admissions or confessions, the nature of the area, and reliable hearsay.
- F. **Frisk:** Is defined as the pat down of the outer clothing for weapons. An officer may only conduct a frisk when he/she reasonably suspects that the person stopped (1) committed, is committing, or is about to commit a criminal offense, and (2) is armed and dangerous, and thus poses a threat to the officer or others.
- G. **Search:** An officer must have probable cause in order to conduct a non-inventory search of an individual or his/her property.
- H. **Probable Cause:** A foundation, based on the facts and circumstances and any sufficiently trustworthy information known to the officer or the collective knowledge of the police, for the belief that a person has committed, is committing, or is about to commit a crime. The belief is reasonable when it rests on an objective, substantial basis as contrasted with a mere subjective suspicion. Probable cause may be based on direct observations or a combination of factors, including, but not limited to, the individual's prior criminal record, furtive conduct or flight from the police, the giving of evasive or conflicting responses to police questioning, admissions or confessions, the nature of the area, and reliable hearsay.

- I. Intelligence: Consists of stored information on activities, associations of individuals, organizations, business, and/or groups who are either:
  1. Suspected of actual or attempted planning, organizing, financing, or commission of criminal acts.
  2. Suspected of being associated with criminal activity with known or suspected criminals.

#### **IV. GENERAL GUIDELINES AND CONSIDERATIONS**

- A. Research is very clear in suggesting that the primary issue shaping people's views about the police is whether they believe that the police are exercising their authority through fair procedures—that is, on procedural justice.
- B. People are sensitive to whether they are treated with dignity and politeness, and to whether studies show that when the public believes that the police exercise their authority in procedurally fair ways, they accept the legitimacy of the police and defer to police authority, both in particular situations and through general increased compliance with the law and cooperation with the police. And, of particular importance is that the use of fair procedures encourages voluntary acceptance of police and legal authority.

#### **V. PROCEDURES**

- A. Field Interviews.
  1. A field interview may involve the following activities.
    - a. Approaching an individual for the purpose of striking up a conversation.
    - b. Asking an individual to identify himself/herself and his/her business in the area. An officer, however, may not employ words or conduct from which a reasonable person would conclude that he/she is not free to leave.
    - c. Noting the individual's physical description, racial background, ethnicity when appropriate, vehicle, location and associates.
    - d. Asking permission to take an individual's photograph, with the understanding that if permission is denied, the officer will not photograph the subject.
      - 1) This does not restrict an officer from conducting standard photo and video surveillance during an investigation.
  2. Since a field interview is a consensual interaction, a police officer may initiate such an encounter without any information indicating that an individual has been or is presently engaged in criminal activity. Although no criminal predicate is required, an officer should have a legitimate intelligence purpose for initiating a field interview.
  3. The following guidelines should be adhered to when conducting a field interview.
    - a. When approaching an individual or group of individuals, officers should clearly identify himself/herself as a police officer, if not in uniform, by announcing his/her identity and displaying departmental identification.

- b. Officers should inform the individuals approached that the encounter is consensual and that they are free to leave at any time.
- c. Officers should be courteous at all times during the contact, but maintain caution and vigilance for furtive movements to retrieve weapons, conceal or discard contraband, or other suspicious actions.
- d. Officers should generally confine their questions to the individual's identity, place of residence, business in the area, and other limited inquiries necessary to resolve any suspicion of criminal activity. However, in no instance should an officer engage an individual longer than is reasonably necessary to make these limited inquiries, unless of course, the facts that become known to the officer warrant an investigatory stop or detention.
- e. Officers are not required to provide an individual with Miranda warnings in order to conduct a field interview. Miranda warnings are required only if the officer's inquiry yields specific facts that:
  - 1) Elevate the officer's suspicions to probable cause to arrest the subject and the subject is told that he/she is not free to leave; and
  - 2) Support an attempt to engage in a custodial interview of the subject.
- f. Individuals are not required, nor can they be compelled, to answer any questions posed during a field interview. Failure to respond to an officer's inquiries is not, in and of itself, sufficient grounds to conduct an investigatory stop or make an arrest, although it may provide sufficient justification for additional observation and investigation.
- g. Should an individual or group of individuals refuse to respond to an officer's efforts in conducting a field interview, absent reasonable suspicion of criminal activity, an officer must not interfere with that individual or group's ability to move about freely. Officers shall be guided by the following legal principles.
  - 1) An individual does not have a legal duty to cooperate with police inquiries.
  - 2) An individual need not answer the questions posed to him. He/she may decline to listen to the questions at all, and go on his/her way.
  - 3) Any attempt to detain the individual, even momentarily, without a lawful basis for doing so, is impermissible.
  - 4) The refusal to answer or cooperate does not create the grounds to detain.
  - 5) An individual may openly photograph or video record police officers during a field interview.

- h. The following acts are prohibited in the conduct of a field interview.
  - 1) Show or use of authority, including the presence of an excessive number of uniformed officers.
  - 2) Display of a weapon.
  - 3) Order to stop.
  - 4) Use of lights/siren.
  - 5) Use of threatening or intimidating tone of voice.
  - 6) Requesting and then retaining an individual's driver's license or other form of identification.
  - 7) Any physical touching.
  - 8) Any suggestion, either by word or action, of intent to frisk.

#### B. Field Observations

- 1. Officers may observe persons known to them who may have previously engaged in some form of criminal activity or who may still be under some form of pre- or post-trial supervision.
- 2. Officers may observe individuals who appear to be engaging in activities or be in places that arouse officers' suspicions. In these instances, an officer may elect to watch a subject prior to approaching him/her to gain a better understanding as to what may be transpiring, and to develop a reasonable factual basis for elevating the officer's interaction with the subject.
- 3. Officers may observe subjects already under investigation to collect additional information that may further enhance the investigation and share that information with other investigators. This information may include the circumstances of where the subject has been observed; the kinds of activities the subject engaged in; the identity of persons who are noted to be in the company of the subject; the vehicle being driven by the subject; and other relevant information.

#### C. Investigatory Stops

- 1. An officer with reasonable suspicion that a crime has taken place, is taking or will take place, may temporarily stop and briefly detain a person. The officer may inquire into possible criminal behavior even though the officer does not have probable cause to make a lawful arrest at that time. In addition, an officer may frisk such a person for weapons as a matter of self-protection when the officer reasonably believes that his/her own safety, or that of others nearby, is endangered. The purpose of this temporary detention for questioning is to enable the officer to determine whether to make an arrest, investigate further, or to take no further police action at that time.

2. This policy recognizes officers are also charged with community caretaking functions that do not require judicial justification. The proper exercise of community caretaking responsibilities, however, is limited to circumstances where an officer acts in response to an immediate danger or concern for an individual's well-being. Community caretaking does not include the detection, investigation, or the acquisition of evidence related to crime.
3. A search for weapons is permissible whenever an officer reasonably believes he/she is dealing with an armed individual, regardless of whether the officer has probable cause to arrest for a crime. The officer need not be absolutely certain that the individual is armed. The legal standard is whether a reasonably prudent person would be warranted in his/her belief the officer's safety, or that of others, was in danger.
4. Investigatory stops by the police are considered to be "forcible" rather than "voluntary," and are, therefore, held to be seizures under the Fourth Amendment. The degree of force appropriate to enforce a stop in a particular case is dependent upon the surrounding facts and circumstances.
5. If an officer fails to adequately enforce a stop, it could result in the escape of a dangerous criminal or pose a serious threat to the lives and safety of other persons. Conversely, the use, display, or threatened use of actual force to carry out an investigatory stop, when such force is not justified under the circumstances, could result in a finding by the court that an arrest occurred without probable cause.
6. Officers should never hesitate to make an investigatory stop and perform a necessary frisk when they have the legal basis to do so in order to meet the practical needs of effective law enforcement.
7. An officer with reasonable suspicion of criminal activity may temporarily stop and detain a person. The officer must be able to articulate and commit his reasons to writing.
8. When a plain-clothed officer makes a decision to stop a person for investigative purposes, he or she should identify himself/herself as a police officer, as soon as it is safe and practical to do so. Both uniformed and plain-clothed officers should also announce the purpose of the inquiry.
9. Once stopped, an individual suspect may be patted down for weapons if a reasonable suspicion exists. Any questioning of the individual stopped should be conducted at that location provided the officer has reasonable suspicion for doing so.
10. Under special circumstances, such as the gathering of a hostile crowd, heavy traffic, or the necessity to use the police radio, the person may be placed in the rear seat of a police vehicle.

11. As part of an investigatory stop, the person may be detained for a short time so that an eyewitness may be brought to the scene to make a Show-Up identification.
12. The officer must be able to articulate what specific facts or observations, together with reasonable inferences, aroused his suspicions.
13. A police officer has the authority to stop a person for an investigative inquiry in any place where the officer has a right to be, including the following.
  - a. Any public place.
  - b. Any place or areas open to the public.
  - c. Any private premises entered with a valid warrant, by consent, or under emergency circumstances.
14. No single factor is usually sufficient to create a reasonable suspicion. The officer must assess the situation based on a consideration of all relevant circumstances. The following are some of the factors which may be considered in determining the reasonableness of an investigatory stop and possible frisk by an officer in the field.
  - a. Basis for a stop.
    - 1) The personal observations of the officer and his police training and experience.
    - 2) An officer's knowledge of criminal activity in the area.
    - 3) The time of day or night, and the place of observation.
    - 4) The general appearance and demeanor of the person and any furtive gestures or behavior that indicates possible criminal conduct.
    - 5) The person's proximity to the scene of a recently reported crime.
    - 6) Unprovoked flight of an individual upon noticing the police.
    - 7) The knowledge of the person's prior criminal record or his association with known criminals.
    - 8) Resemblance of the suspect to a person wanted for a known crime.
    - 9) Information received from police sources or from other reasonably reliable sources of information.
    - 10) The type of crime being investigated.
    - 11) Whether the officer is alone or outnumbered

- b. Basis for a frisk.
    - 1) Visible objects in the person's possession or obvious bulges in his/her clothing, suggestive of weapons.
15. Officers shall exercise due caution when making an investigatory stop.
- a. The fact that an individual has aroused the police officer's suspicion should cause the officer to make his/her approach with caution based on his training and judgment, alert to the possibility of potential danger.
  - b. A routine police check of suspicious circumstances may uncover the commission of a serious crime or the presence of a dangerous criminal.
  - c. If the stopped suspect has just committed a major crime, he/she may be an immediate threat to the officer's safety or he may suddenly attempt to flee from the scene.
  - d. Use of Force to Stop.
    - 1) If the person fails or refuses to stop when so directed by a police officer, reasonable force and physical restraint (including handcuffs) may be justified. See also Policies and Procedures # 404 - Use of Force.
    - 2) Actual force may be used to stop an individual, as long as the force is both necessary and proportionate to the situation. However, this does not include the discharge of firearms or application of other weapons or devices.
    - 3) Self Defense: If an officer is attacked, sufficient and reasonable force may be used to defend himself/herself and to ensure his personal safety.
    - 4) Any use of force and the reporting thereafter shall be consistent with the Department's Policies and Procedures on Use of Force.
16. An investigatory stop should begin with exploratory questions regarding the suspect's identity and his purpose for being in a particular area.
- a. Every officer should initiate an investigatory inquiry in a calm, conversational manner in order to gain as much information as possible without placing the suspect on the defensive.
  - b. Even in a brief conversation with a suspect, an alert and well-trained officer can often detect or sense that something is wrong and determine if further police investigation is required.
17. Duration of an investigatory stop.
- a. The stop should be reasonably brief under the particular circumstances. The degree of suspicion the officer reasonably harbors must be proportional to the duration of the detention. Officers must exercise discretion to determine the period of time required for an investigatory stop.

- b. A stop may only last long enough for the officer to make the threshold inquiry into whether the suspicions were or were not well-founded.
  - c. The period of investigative detention should be sufficiently brief so that the “stop” cannot be construed as an “arrest,” which would require probable cause.
18. Criteria for Frisks.
- a. A frisk shall not be made a pretext to search for evidence of crime. A frisk must be a protective measure.
  - b. If there is no danger, a frisk is not justified, even if a stop is warranted.
  - c. If an officer reasonably believes that his/her own safety or that of others is in danger, he/she may pat-down the person stopped and may also search the area and containers within that person’s immediate control for weapons or other items that could inflict injury.
  - d. It is not necessary that the officer be absolutely certain that such person is armed. However, the officer must perceive danger to himself/herself or others because of events leading to the stop or which occurred after or during the stop.
  - e. If the officer has a reasonable belief or suspicion, based upon reliable information or personal observation, that a subject is carrying or concealing a weapon on his/her person, the officer should immediately check that area before performing a general pat-down.
  - f. The frisk must initially be limited to an external pat-down of the suspect’s outer clothing. However, if the outer clothing is bulky, such as a heavy overcoat, the garments may be opened to permit a pat-down of the inner clothing.
  - g. The pat frisk of a hard container, e.g. such as a backpack, suitcase or hard leather/steel toed boots, may not be sufficient to detect whether a suspect has a weapon on his/her person or within his/her reach. Officers may open such containers as a protective measure.
  - h. The pat frisk of a soft container usually will suffice to support or eliminate an officer’s reasonable suspicion that a weapon or other dangerous device, e.g., an explosive, may be hidden within. In such cases, a pat frisk of the container should ordinarily be performed prior to opening the container. With such containers, if the pat frisk reveals that no weapon or other dangerous device is inside, no further search of the container is required.
  - i. Particular features of any container, readily observable by an officer, may make it apparent that nothing short of opening the container will suffice to address the officer’s reasonable suspicions. In such cases, officers are not required to perform a preliminary pat frisk of the container.

- j. When a pat-down is conducted on a member of the opposite sex, officers shall use the preferred method for frisking of a person of the opposite sex (e.g., use the back of the hand).
- k. If the officer feels an object that could reasonably be a weapon, he/she may conduct a further search for that particular object and remove it.
- l. An officer may also seize contraband detected while frisking a suspect for possible concealed weapons, as long as the contraband is instantly recognizable by “plain feel.” Whether contraband (including non-threatening contraband such as drugs) is instantly recognizable to the officer by “plain feel” may be dependent upon that officer’s training and experience. The “plain feel” doctrine, however, is limited. It does not permit an officer to conduct a general exploratory search for whatever evidence of criminal activity he might find. If the officer must manipulate or otherwise further physically explore the concealed object in order to discern its identity, then an unconstitutional search has occurred.
- m. If, after completing a pat-down of the subject, the officer does not feel any object that could reasonably be a weapon, the search shall be discontinued.
- n. If, while frisking a stopped person, the officer discovers an illegal firearm, contraband, stolen property, or evidence of a crime, and probable cause to arrest develops, an arrest should be made and a full-scale search incident to that arrest should be made.
- o. Since an investigatory stop is a non-custodial seizure, police are not obligated to advise a suspect of his/her Miranda warnings prior to threshold questioning. However, should an officer restrain a person beyond the extent minimally necessary to effectuate the stop, a custodial situation may exist in which the requirements to issue Miranda warnings will apply.

#### D. Consent Searches of Motor Vehicles and/or Persons

- 1. No officer may ask an operator of a motor vehicle to conduct a search of the motor vehicle or the contents of the motor vehicle that is stopped by an officer solely for a motor vehicle violation.
  - a. Any search by an officer of a motor vehicle or the contents of the motor vehicle during a stop for a motor vehicle violation shall be:
    - 1) Based on probable cause; or
    - 2) After having received the unsolicited consent to perform such search from the operator of the motor vehicle in written form or recorded by a body-worn camera (BWC) or a mobile video recorder (MVR).

- b. This section does not apply if an officer is authorized to conduct a motor vehicle inventory in accordance with Policies and Procedures # 702 – Motor Vehicle Inventory.
- 2. Absent the existence of probable cause, receiving the consent of a person to conduct a search of him/her does not constitute justification for the officer to conduct such search.

## **VI. SPECIAL CONSIDERATIONS FOR MAKING FIELD STOPS OF ADOLESCENTS AND CHILDREN**

- A. Children’s and adolescent’s perceptions and behaviors are influenced by biological and psychological factors related to their developmental stage.
- B. Children’s and adolescent’s responses differ from adults because of fundamental neurobiological factors and related developmental stages of maturation.
- C. How children and youth perceive, process and respond to situations is a function of their developmental stage, and secondarily of their culture and life experience.
- D. Police should define expectations, responses, and interactions to the developmental stage of the children and youth they serve.
- E. A developmentally competent approach helps police navigate with teens the complicated process of trying on different personalities and testing limits as they converge on adulthood.
- F. As police officers, recognizing what drives a young person’s behavior, and providing alternatives in a developmentally competent manner, increases the likelihood of teens choosing more appropriate strategies to plot a course through the complex demands of adolescence.

## **VII. REPORTING OF INFORMATION GATHERED IN FIELD INTERVIEWS, FIELD OBSERVATIONS AND INVESTIGATORY STOPS**

- A. Reporting Field Interviews/Observations and Investigatory Stops: The information or intelligence obtained as a result of a field interview, field observation, or investigatory stop may have immense importance to an ongoing investigation or may serve as important intelligence relative to future investigations. It may also provide factual and legal justification for elevating initial suspicions to those that would support an investigation. Unless information obtained during field interviews, field observations, and investigatory stops is collected and shared, it is of little value. Pooling this information benefits the entire department. Toward this end, the department has created a Field Interview report form. The report is available in the Field Interview module in LEAS.
- B. The following guidelines shall be adhered to with regards to Field Interview reports.

1. Whenever an officer engages in a field interview or a field observation, the officer shall complete a Field Interview report with as much information as can be gathered during that particular incident. This must include the legitimate intelligence purpose for the field interview or field observation. A legitimate intelligence purpose may include, but is not limited to, instances when an officer observes and/or interviews
  - a. An individual known to be associated with a gang or criminal enterprise.
  - b. An individual who is the subject of an on-going investigation.
  - c. An individual who is known to the officer to be under some form of pre-trial or post-trial supervision.
  - d. An individual in a suspicious neighborhood or location based on his/her known associations.
  - e. An individual acting suspiciously because of the time of day at which the activity is observed.
  - f. An individual who appears to be engaging in or about to engage in criminal behavior.
- C. The Field Interview report on the encounter or observation, shall include:
  1. The legitimate intelligence purpose, and/or documenting sufficient facts establishing the lawful basis for the stop, officer must also record.
  2. The date, time, and location of the field interview, field observation, or investigatory stop.
  3. The race of the individual(s).
  4. Name, address, gender and age of the individuals(s).
  5. Additional demographic information as may be relevant to particular cases.
- D. Should a field interview escalate in to an arrest, the officer shall incorporate all of the information obtained during the encounter into the appropriate police investigation report, being sure to attach all personal information and any vehicular information to the appropriate files.
- E. In the event that a field interview escalates in to an investigatory stop, or where an investigatory stop is initially conducted, the officer shall provide as much supporting information as can be gathered to establish the reasonable suspicion for the stop.
- F. Homeland Security: Whenever an officer determines that an individual may be engaged in suspicious activity that relates to Homeland Security the officer shall document the

determination and the police response related to the activity in an Incident Report. Some examples of such suspicious activity may include, but are not limited to, the following.

1. Persons observed, or reported to have been, taking photographs, making sketches, or taking unusual interest in the details of certain infrastructure such as tunnels, bridges, fuel storage facilities, or similar venues that may be considered high value targets for terrorism activity.
  2. Persons who are in possession of, or attempt to gain possession of, uniforms, equipment, or identification that may not be consistent with legitimate needs.
  3. Persons in possession of false or altered identification documents.
  4. Persons involved in acquiring unusual materials, or inordinate amounts of materials that could be used in the making of dangerous devices.
- G. Access to Field Interview Reports: The department will provide access to Field Interview reports in the LEAS for each sworn officer and authorized user.