

Contacts and Temporary Detentions

419.1 PURPOSE AND SCOPE

The purpose of this policy is to establish guidelines for temporarily detaining but not arresting persons in the field, conducting field interviews (FI) and pat-down searches, and the taking and disposition of photographs.

419.1.1 DEFINITIONS

Consensual encounter - Occurs when an officer contacts an individual but does not create a detention through words, actions, or other means. In other words, a reasonable individual would believe that his/her contact with the officer is voluntary.

Field interview (FI) - The brief detainment of an individual, whether on foot or in a vehicle, based on reasonable suspicion for the purpose of determining the individual's identity and resolving the officer's suspicions.

Field photographs - Posed photographs taken of a person during a contact, temporary detention, or arrest in the field. Undercover surveillance photographs of an individual and recordings captured by the normal operation of a Mobile Audio Video (MAV) system, body-worn camera, or public safety camera when persons are not posed for the purpose of photographing are not considered field photographs.

Pat-down search - This type of search is used by officers in the field to check an individual for dangerous weapons. It involves a thorough patting down of clothing to locate any weapons or dangerous items that could pose a danger to the officer, the detainee, or others.

Reasonable suspicion - When, under the totality of the circumstances, an officer has articulable facts that criminal activity may be afoot, and a particular person is connected with that possible criminal activity.

Temporary detention - When an officer intentionally, through words, actions or physical force, causes an individual to reasonably believe he/she is required to restrict his/her movement without an actual arrest. Temporary detentions also occur when an officer actually restrains a person's freedom of movement.

419.2 POLICY

The Fargo Police Department respects the right of the public to be free from unreasonable searches or seizures. Due to an unlimited variety of situations confronting the officer, the decision to temporarily detain a person and complete an FI, pat-down search, or field photograph shall be left to the officer based on the totality of the circumstances, officer safety considerations, and constitutional safeguards.

419.3 FIELD INTERVIEWS

Based on observance of suspicious circumstances or upon information from investigation, an officer may initiate the stop of a person, and conduct an FI, when there is articulable, reasonable

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suspicion to do so. A person, however, shall not be detained longer than is reasonably necessary to resolve the officer's suspicions.

Nothing in this policy is intended to discourage consensual contacts. Frequent casual contact with consenting individuals is encouraged by the Fargo Police Department to strengthen community involvement, community awareness, and problem identification.

419.3.1 INITIATING A FIELD INTERVIEW

When initiating the stop, the officer should be able to point to specific facts that, when considered with the totality of the circumstances, reasonably warrant the stop. Such facts include but are not limited to an individual's:

- (a) Appearance or demeanor suggesting that he/she is part of a criminal enterprise or is engaged in a criminal act.
- (b) Actions suggesting that he/she is engaged in a criminal activity.
- (c) Presence in an area at an inappropriate hour of the day or night.
- (d) Presence in a particular area is suspicious.
- (e) Carrying suspicious objects or items.
- (f) Excessive clothes for the climate or clothes bulging in a manner that suggests he/she is carrying a dangerous weapon.
- (g) Location in proximate time and place to an alleged crime.
- (h) Physical description of a suspect or clothing worn that matches clothing worn by a suspect in a recent crime.
- (i) Prior criminal record or involvement in criminal activity as known by the officer.

419.4 PAT-DOWN SEARCHES

Once a valid stop has been made, and consistent with the officer's training and experience, an officer may pat a suspect's outer clothing for weapons if the officer has a reasonable, articulable suspicion the suspect may pose a safety risk. The purpose of this limited search is not to discover evidence of a crime, but to allow the officer to pursue the investigation without fear of violence. Circumstances that may establish justification for performing a pat-down search include but are not limited to:

- (a) The type of crime suspected, particularly in crimes of violence where the use or threat of weapons is involved.
- (b) Where more than one suspect must be handled by a single officer.
- (c) The hour of the day and the location or area where the stop takes place.
- (d) Prior knowledge of the suspect's use of force and/or propensity to carry weapons.
- (e) The actions and demeanor of the suspect.
- (f) Visual indications that suggest the suspect is carrying a firearm or other dangerous weapon.

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Whenever practicable, a pat-down search should not be conducted by a lone officer. A cover officer should be positioned to ensure safety and should not be involved in the search.

419.5 FIELD PHOTOGRAPHS

All available databases should be searched before photographing any field detainee. If a photograph is not located, or if an existing photograph no longer resembles the detainee, the officer shall carefully consider, among other things, the factors listed below.

419.5.1 FIELD PHOTOGRAPHS TAKEN WITH CONSENT

Field photographs may be taken when the subject being photographed knowingly and voluntarily gives consent. When taking a consensual photograph, the officer should make note of the consent in the narrative portion of the applicable call for service. Officers may not force a person in a consensual encounter in a public place to pose, or require them to face the camera during the photographing. Officers, in such encounters, are not permitted to keep citizens at a location while waiting for someone to take their photo.

419.5.2 FIELD PHOTOGRAPHS TAKEN WITHOUT CONSENT

Photographs of persons located in public areas, where they have no expectation of privacy, are allowed without the person's consent, if the person is in such a position that the officer can take the picture without seeking consent, and the officer does not force the person to pose for the photo.

Field photographs may also be taken without consent if they are taken during a detention which is based upon reasonable suspicion of criminal activity, and the photograph serves a legitimate law enforcement purpose related to the detention. The officer must be able to articulate facts that reasonably indicate the subject was involved in, or was about to become involved in criminal conduct. The subject should not be ordered to remove, or lift any clothing for the purpose of taking a photograph.

If, prior to taking a photograph, the officer's reasonable suspicion of criminal activity has been dispelled, the detention must cease and the photograph should not be taken.

All field photographs and related reports shall be retained in compliance with this policy and the records retention schedule. All other copies of photographs, whether electronic or physical, shall be deleted/destroyed after the photograph has been properly entered in the records management system, unless approved by a supervisor.

419.6 SUPERVISOR RESPONSIBILITIES

While it is recognized that field photographs often become valuable investigative tools, supervisors should monitor such practices as best as possible in view of the above listed considerations. This is not to imply that supervisor approval is required before each photograph is taken. Access to, and use of, field photographs shall be strictly limited to law enforcement purposes.

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419.7 DISPOSITION OF PHOTOGRAPHS

All detainee photographs must be adequately labeled and uploaded to the department's Bulletin Board, and/or submitted to the Intel Unit with either an associated FI card, or other documentation explaining the nature of the contact. If an individual is photographed as a suspect in a particular crime, the photograph should be submitted with the related case report for entry into the case file..

If a photograph is not associated with an investigation where a case number has been issued, the officer will forward the photograph to one of the following locations:

- (a) If the photograph and associated FI or memorandum is relevant to criminal gang enforcement, the officer will forward the photo and documents to the Intel Unit and to the Metro Street Crimes supervisor. The Metro Street Crimes supervisor will ensure the photograph and supporting documents are retained as prescribed in the Criminal Organizations Policy.
- (b) Photographs that do not qualify for retention in the criminal gang file, or that are not evidence in an investigation with an assigned case number shall be forwarded to the Intel Unit. These photographs will be purged in accordance with intelligence purging guidelines.

When a photograph is taken in association with a particular case, the investigator may use such photograph in a photo lineup. Thereafter, the individual photograph should be retained as a part of the case file. All other photographs will be kept in compliance with the department's records retention schedule.

419.8 WITNESS IDENTIFICATION AND INTERVIEWS

Because potential witnesses to an incident may become unavailable or the integrity of their statements compromised with the passage of time, officers should, when warranted by the seriousness of the case, take reasonable steps to promptly coordinate with an on-scene supervisor and/or criminal investigator to utilize available members for the following:

- (a) Identifying all persons present at the scene and in the immediate area.
 1. When feasible, a recorded statement should be obtained from those who claim not to have witnessed the incident but who were present at the time it occurred.
 2. Any potential witness who is unwilling or unable to remain available for a formal interview should not be detained absent reasonable suspicion to detain or probable cause to arrest. Without detaining the individual for the sole purpose of identification, officers should attempt to identify the witness prior to his/her departure.
- (b) Witnesses who are willing to provide a formal interview should be asked to meet at a suitable location where criminal investigators may obtain a recorded statement. Such witnesses, if willing, may be transported by Department members.
 1. A written, verbal or recorded statement of consent should be obtained prior to transporting a witness. When the witness is a minor, consent should be obtained from the parent or guardian, if available, prior to transport.