

AURORA POLICE DEPARTMENT

DIRECTIVES MANUAL

08.52 CONSTITUTIONAL POLICING

Approved By:	Art Acevedo, Interim Chief of Police
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Associated Policy:	DM 08.48, 08.50
References:	C.R.S. § 24-31-901(1), C.R.S. § 16-3-103(1)
Review Authority:	Professional Standards and Training Division Chief and APD Legal Advisor(s)

8.52.01 PURPOSE

The purpose of this policy is to ensure Aurora Police Department (APD) sworn members conduct all encounters as well as the associated weapon pat-downs and searches in accordance with the rights secured and protected by the United States Constitution, federal and state law, case law, and APD policy. Persons contacted include those who are in vehicles or as pedestrians and encompass consensual, investigatory (reasonable suspicion), arrest (probable cause), and emergency mental health (M-1) situations. Contacts can be officer-initiated, person-initiated, or result from a call for service. This policy also provides guidance to supervisors on proper review and documentation of APD sworn members' contacts with persons.

8.52.02 SCOPE

This directive applies to all sworn members of APD.

8.52.03 DEFINITIONS

Consensual: An encounter where the sworn member has no lawful authority to direct or detain the person and is voluntary on the part of the person. The person is free to decline or revoke the consent at any time and leave without interference or implied authority of the sworn member. These encounters could result from a sworn member's suspicion or a hunch but do not rise to the level of reasonable suspicion required to detain a person.

Contact: as defined by C.R.S. § 24-31-901(1), means an in-person interaction with an individual, whether or not the person is in a motor vehicle, initiated by a peace officer, whether consensual or nonconsensual, for the purpose of enforcing the law or investigating possible violations of the law.

Custodial Arrest: Seizure of a person for the purpose of taking them to a detention facility for booking procedures and the subsequent filing of criminal charges.

Encounter: Whenever a sworn member is interacting with a member of the public while in a sworn law enforcement capacity (in-person).

Non-custodial Arrest: Seizure of a person for the purpose of issuing them a summons to court to face criminal charges or issue them a verbal warning. Sworn members who conduct a non-custodial arrest have the same legal authority as when they conduct a custodial arrest.

Pat-Downs: A physical check of a person's outer clothing using hands for readily accessible weapons. Consent or reasonable suspicion to believe the person is armed and presently dangerous to the sworn

member or to others is required. A pat-down does not involve entering pockets or manipulating objects in the pockets unless the object is perceived as a weapon.

Pointing a Firearm at a Person: When a sworn member intentionally points a firearm in the direction of a person, and if the sworn member were to pull the trigger of the firearm, the likely outcome would be that person being struck by a bullet.

Levels of Proof:

Reasonable Suspicion: Articulable facts and circumstances known to the sworn member at the time of a contact when, taken as a whole, that would lead a reasonable officer to reasonably suspect that a particular person has committed, is committing, or is about to commit a specific crime(s). Reasonable suspicion is more than a hunch; however less than probable cause. The person is not free to leave during a detention based on reasonable suspicion.

Probable Cause: Facts and circumstances taken as a whole that would lead a reasonable officer to believe that a particular person has committed or is committing a crime.

Pretext Stop: Stopping a person or occupants of a vehicle to investigate other suspected crimes or violations for which the sworn member has neither reasonable suspicion nor probable cause. Sworn members must have reasonable suspicion or probable cause for a violation for which they are actually stopping the person or vehicle rather than relying only on the pretense of suspected crimes or violations for which the sworn member has not yet established reasonable suspicion or probable cause.

Search: A search is a physical inspection of a person, vehicle, location, or item that the sworn member has the lawful authority to perform under consent or probable cause.

Witness: A person that is not believed to be involved in criminal activity; however, someone whom the sworn member believes may have information relating to suspected criminal activity or an event of public interest the member is involved in.

8.52.04 POLICY

The policy of the Aurora Police Department is that sworn members contact persons in a manner that is unbiased and recognizes the constitutional protections afforded to all persons. Sworn members should recognize the value of creating opportunities to improve the perceived legitimacy of the agency by the public. Contacts with persons should reflect respect and impartiality and promote trust between the APD and the community we serve. Additionally, this policy provides guidance on documentation and review regarding person contacts. See related [DM 08.48 - Suspicious Calls](#) and [DM 08.50 - Contact Data Collection](#) for further information.

8.52.05 CORE PRINCIPLES

The following principles are expectations of APD sworn members when in contact with a member of the public:

Relational-Based Policing: Every interaction with a member of the public is an opportunity to build respect, legitimacy, and trust with the public. These interactions increase cooperation, strengthen connections between APD and the public, and advance public safety. We share a responsibility with the public to develop strategies to decrease crime and improve the quality of life for our community and visitors.

Constitutional Policing: Every encounter shall be conducted lawfully under the First, Fourth, and Fourteenth Amendments to the United States Constitution and in accordance with state law and this policy.

Procedural Justice: Members will treat people with fairness, dignity, and respect and, whenever possible, take time to explain the actions of a member and answer questions.

Open Dialogue | Voice: Members of the public should be given a voice during encounters when it is safe to do so, regardless of the nature of the contact.

Anti-Bias Policing: Members will not initiate or continue any contact based on a person's race, ethnicity, national origin, religion, gender, sexual orientation, age, disability, or gender identity, except when such an attribute is part of a suspect-specific description identified by the member. The suspect-specific description must be combined with other non-demographic identifying factors in such cases.

Accountability: Contacts, detentions, searches, or arrests that do not conform to policy or law shall result in an administrative investigation. Members are expected to hold themselves and other members accountable to the Vision, Mission, and Core Values of the Aurora Police Department.

8.52.06 GUIDELINES RELATED TO PERSON CONTACTS

During a contact, the sworn member's authority varies depending on the level of proof that has been established for the contact. The following are associated actions that can take place depending on the level of proof that exists:

- Applying handcuffs or directing a person to stand, sit, or position themselves in a manner not of their choosing:

The sworn member shall establish reasonable suspicion or probable cause and articulate why it is objectively reasonable, based on the totality of the circumstances, for the person to assume the position directed by the sworn member. Such articulation may include but is not limited to enhancing specific officer safety concerns, bystanders' safety, the subject's safety, reducing the risk of the subject fleeing, and specific environmental factors.

- Pointing a firearm at a person:

When a sworn member points a firearm at a person, it is a seizure under the Fourth Amendment to the United States Constitution. In these circumstances, the sworn member shall be able to articulate an objectively reasonable fear for their or another's safety, based on the totality of circumstances, and that the use of deadly force would be objectively reasonable and permissible under department policy under those circumstances.

- Use of Force

In these circumstances, the sworn member shall articulate why it is objectively reasonable to use force either to effect an arrest, protect the person or another, or involuntarily detain the person during an investigation.

Contacts Transition into Another Level of Proof:

Sworn members shall articulate when a contact transitions to another level of proof, thereby changing the lawful authority of the sworn member and the rights of the person contacted. Examples include when reasonable suspicion is dispelled, and the sworn member informs the person that they are free to leave, or during an investigatory consensual encounter when the sworn member develops reasonable suspicion to detain a person. When an encounter transitions to another level of proof, the sworn member shall document the facts and circumstances that led to that change. Documentation shall be in CAD notes, general offense (GO) reports, or supplemental reports.

8.52.07 CONSENSUAL ENCOUNTERS

Consensual encounters are the foundation of enhancing communication, trust, legitimacy, and understanding between APD and members of the public. The outcome of such interactions are information sharing, strong relationships, and public support in crime prevention and intervention efforts. These interactions are based on mutual respect and are professional in nature. People should always feel free to discontinue a consensual encounter without pressure or repercussions. Additionally, the fact that a person declines to participate in a consensual encounter cannot be used as a basis for the sworn member to escalate the contact or further intrude on the person. Sworn members should be aware that they can imply detention through tone, verbiage, and actions.

Can the person refuse the contact:	Yes
Contact Data Collection Form Required:	No
BWC Activation Required:	No
Member has Authority to Detain:	No
Member has Authority to Pat-Down:	No
Member has Authority to Search:	No
Member must provide Business Card:	Upon Request

8.52.08 INVESTIGATORY CONSENSUAL CONTACTS

Consensual contacts can be investigatory, either of the person being contacted or witnesses, victims, etc. In these cases, the sworn member does not have specific articulable facts amounting to reasonable suspicion; however, for other reasons may believe criminal activity is afoot. In these cases, sworn members are reminded that the person involved in the consensual contact is free to disengage at any time and that the sworn member is not permitted to imply detention through words, tone, or actions.

Can the person refuse the contact:	Yes
Contact Data Collection Form Required:	Yes
BWC Activation Required:	Yes
Member has Authority to Detain:	No
Member has Authority to Pat-Down:	With Consent
Member has Authority to Search:	With Consent
Member must provide Business Card:	Yes

8.52.09 INVESTIGATORY DETENTIONS / TERRY STOPS

An investigatory detention based on reasonable suspicion occurs when a sworn member uses words or takes actions to stop a person, keep a person in place, or compel a person to do something. Reasonable suspicion affords the sworn member the authority to detain the person involuntarily to

either confirm or dispel the suspicion. If the sworn member's suspicion is dispelled at any time, the sworn member shall, without delay, advise the person that they are free to leave. C.R.S. § 16-3-103(1) provides that sworn members can require a person to give their name, address, ID (if available), and an explanation of their actions.

The scope of questioning during an investigatory detention shall be consistent with the suspected criminal activity, and the duration of the contact shall be proportional to the suspected criminal activity. An investigatory detention shall be discontinued when the duration of the contact is no longer proportional to the suspected criminal activity being investigated.

Investigative stops may not be based solely on a person's presence in a location known for criminal activity. Investigative stops must be supported by other articulable facts that amount to reasonable suspicion for a specific crime(s). Additionally, a pat-down for weapons is not assumed unless the sworn member has reasonable suspicion that the person is armed and presently dangerous to the sworn member or to others.

When discontinuing an investigatory stop when the person(s) is released, an explanation for the stop shall be provided, and the sworn member shall take a reasonable amount of time to answer questions.

Can the person refuse the contact:	No
Contact Data Collection Form Required:	Yes
BWC Activation Required:	Yes
Member has Authority to Detain:	Yes
Member has Authority to Pat-Down:	If reasonable suspicion for a weapon is present.
Member has Authority to Search:	With Consent
Member must provide Business Card:	Yes

8.52.10 PAT-DOWNS

A pat-down as the result of a lawful *Terry* stop is not intended to discover evidence of a crime. To perform a pat-down, the sworn member must have articulable reasonable suspicion why they believe the person is armed and presently dangerous to the sworn member or to others. Reasonable suspicion of a crime does not necessarily presume reasonable suspicion of a weapon, and both must be articulated independently. The scope of a pat-down can extend to bags or other property only when the sworn member has a reasonable belief that the bag or property could contain a weapon and is within the person's reach.

Sworn members must provide specific information when articulating their reasoning for a pat-down other than general statements such as "officer safety" or "high crime area." The aforementioned statements alone do not solely provide justification for a pat-down.

Some factors sworn members should consider when determining whether a pat-down is lawful include the following:

- Type of crime suspected - particularly in crimes of violence where the use or threat of weapons is involved.
- Sworn member versus subject factors (i.e., age, size, relative strength, skill level, injury/exhaustion, and number of officers versus subjects)
- Prior knowledge of the subject's use of force or propensity to carry weapons
- The appearance or demeanor of the subject (e.g., bulky clothing or jacket on a warm day)

The following factors may, in and of themselves, constitute reasonable suspicion for a pat-down, such as a visual indication that the person is carrying a firearm or other weapon and the sworn member has reason to believe the person is armed and presently dangerous to the sworn member or to others. During a pat-down, if the sworn member feels an item that is immediately apparent as a weapon or contraband (plain-feel doctrine based on probable cause), the sworn member may reach into or disturb the article of clothing to retrieve the item. A pat-down does not involve entering pockets or manipulating objects in the pockets unless the object is perceived as a weapon or contraband. If the sworn member discovers contraband or evidence of a crime, the sworn member may lawfully seize those items, and they may be considered when establishing probable cause to arrest or further search the person.

Alternatives to a pat-down could include directing a person to either remove or not remove their hands from pockets or separating a person from unsearched bags or areas that may contain a weapon. When returning unsearched items to a person, a sworn member may briefly manipulate the exterior to determine if it may contain a weapon if the sworn member reasonably suspects that harm may result if returned to the person unchecked. If a pat-down is performed, irrespective of whether a weapon is found, the sworn member will document the contact to include the justification for the stop and pat-down.

Can the person refuse the contact:	No
Contact Data Collection Form Required:	Yes
BWC Activation Required:	Yes
Member has Authority to Detain:	Yes
Member has Authority to Pat-Down:	If reasonable suspicion for a weapon is present.
Member has Authority to Search:	With consent, probable cause, or a warrant.
Member must provide Business Card:	Yes

8.52.11 ARRESTS

An arrest can be custodial (physical arrest) or non-custodial (i.e., summons, warning, etc.). A physical arrest is effected when the sworn member has achieved probable cause and physically restrains the person or advises the person they are under arrest, and the person submits. The person is not free to leave, and a search incident to arrest is authorized.

Can the person refuse the contact:	No
Contact Data Collection Form Required:	Yes
BWC Activation Required:	Yes
Member has Authority to Detain:	Yes
Member has Authority to Pat-Down:	Yes
Member has Authority to Search:	Yes
	<ul style="list-style-type: none"> - <u>Custodial Arrest</u>: Complete Search - <u>Non-Custodial Arrest</u>: Search only for instrumentality of the crime the suspect is being issued a summons for.
Member must provide Business Card:	Yes

8.52.12 EMERGENCY MENTAL HEALTH HOLDS (M-1)52

A sworn member may initiate an emergency mental health hold (M-1) when the sworn member believes the person may be a danger to themselves, danger to others, or gravely disabled due to their mental state, whether a crime has been committed or not.

A crime may or may not have been committed, and any crime committed may be mitigated by the person's mental culpability. A sworn member's intent during such contact generally must be to care for the person's welfare and protect others. A sworn member has the authority to detain in this context and shall only use force as a last resort when other options have been ineffective or are not practical to protect the person or others.

Can the person refuse the contact:	No
Contact Data Collection Form Required:	Yes
BWC Activation Required:	Yes
Member has Authority to Detain:	Yes
Member has Authority to Pat-Down:	Yes
Member has Authority to Search:	Yes
Member must provide Business Card:	Yes

8.52.13 PRETEXTUAL STOPS

When contacting a person relative to a pretext (i.e., the sworn member suspects the person is involved in some type of criminal activity), the sworn member must have either reasonable suspicion or probable cause of another violation that justifies the detention. For a pretextual stop, the officer must have an articulable suspicion or hunch relative to a specific crime or criminal activity. The underlying reason for a pretextual stop shall not be based on a person or person's membership in a protected class.

Can the person refuse the contact:	No
Contact Data Collection Form Required:	Yes
BWC Activation Required:	Yes
Member has Authority to Detain:	Yes
Member has Authority to Pat-Down:	If reasonable suspicion for a weapon is present.
Member has Authority to Search:	With consent, probable cause, or a warrant.
Member must provide Business Card:	Yes

8.52.14 SEARCHES

Searches of persons, places, vehicles, or things are only permissible under certain circumstances governed by the Fourth Amendment. A consensual search is permitted if the person freely consents to a sworn member's request, and the person has the authority to permit such search regarding ownership or lawful control of such place or thing. Consistent with C.R.S. § 16-3-310, a request for consent must be accompanied by a statement that the consent can be revoked at any time. Non-consensual searches are permitted when the sworn member has a warrant approving such search or when there is a valid exception to the warrant requirement.

Can the person refuse the contact:	Depends upon the level of proof
Contact Data Collection Form Required:	Yes
BWC Activation Required:	Yes
Member has Authority to Detain:	Yes
Member has Authority to Pat-Down:	N/A
Member has Authority to Search:	With consent, probable cause, or a warrant.
Member must provide Business Card:	Yes

8.52.15 WITNESSES

Encounters with witnesses are consensual, and the witness cannot be detained, compelled to speak with the sworn member, or compelled to identify themselves regardless of the suspected crime.

Can the person refuse the contact:	Yes
Contact Data Collection Form Required:	No
BWC Activation Required:	Yes
Member has Authority to Detain:	No
Member has Authority to Pat-Down:	With Consent
Member has Authority to Search:	With Consent
Member must provide Business Card:	Yes

8.52.16 VEHICLE STOPS

A vehicle stop is a contact that involves the involuntary detention of the occupants of a vehicle based on reasonable suspicion or probable cause. During a vehicle stop based on a traffic violation by the driver, other occupants may be detained but cannot be compelled to identify themselves. A vehicle stop for the purposes of issuing a summons is a seizure; however, the stop should not last longer than the time required to issue the summons. This time can include checking the driver's license status, checking for warrants, and checking vehicle registration and proof of insurance. Deliberately prolonging a stop for any reason not amounting to reasonable suspicion is a Fourth Amendment violation.

In the event the stop is based on articulable reasonable suspicion of another crime the sworn member reasonably believes the vehicle's occupants are involved in, the sworn member can request identifying information of those persons. A contact form is required to be completed for the driver of the vehicle and any occupant that is questioned under reasonable suspicion.

Sworn members are permitted to conduct a protective sweep of a vehicle in a limited capacity to within arm's reach of the person when the member has reasonable suspicion to believe the occupant may have a weapon in the area searched and it presents a danger. Occupants may be ordered from the vehicle during a protective sweep.

Can the person refuse the contact:	No
Contact Data Collection Form Required:	Yes
BWC Activation Required:	Yes
Member has Authority to Detain:	Yes
Member has Authority to Pat-Down:	If reasonable suspicion for a weapon is present.
Member has Authority to Search:	With consent, probable cause, or a warrant.
Member must provide Business Card:	Yes