

City of Fayetteville Staff Review Form

City Council Agenda Items  
and  
Contracts, Leases or Agreements

11/15/2011

City Council Meeting Date  
Agenda Items Only

Greg Tabor  
Submitted By

Police  
Division

Police  
Department

Action Required:

Staff seeks council approval of a resolution to adopt Fayetteville Police Department Policies: 1.1.1, Law Enforcement Agency Role; 1.2.2, Warrant Less Detention, Search and Seizure; and 1.2.4, Domestic Violence

\$0

Cost of this request

Category / Project Budget

Program Category / Project Name

Account Number

Funds Used to Date

Program / Project Category Name

\$

Project Number

Remaining Balance

Fund Name

Budgeted Item

Budget Adjustment Attached

  
Department Director

10-26-11  
Date

Previous Ordinance or Resolution # \_\_\_\_\_

Original Contract Date: \_\_\_\_\_

  
City Attorney


10-27-11  
Date

Original Contract Number: \_\_\_\_\_

  
Paul A. Bester  
Finance and Internal Services Director

10-28-2011  
Date

Received in City 10-27-11 P12:25 RCVD  
Clerk's Office

  
Chief of Staff

10-31-11  
Date


Received in  
Mayor's Office

  
Mayor

10/31/11  
Date

ENTERED  
10/27/11  


Comments:

**To:** Mayor Lioneld Jordan and City Council  
**From:** Greg Tabor, Chief of Police   
**Date:** Wednesday, 10/26/2011  
**Re:** Police Department Policy Updates

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**Recommendation:**

Council approves a resolution adopting Fayetteville Police Department Policies: 1.1.1, Law Enforcement Agency Role; 1.2.2, Warrant Less Detention, Search & Seizure; and 1.2.4, Domestic Violence

**Background and Discussion:**

The current Fayetteville Police Department Policies were approved by council resolution #3-99 on January 5<sup>th</sup>, 1999. The department is currently in the process of reviewing all policies and updating as necessary to conform to current practices and to comply with accreditation standards.

**Budget Impact:**

None

**RESOLUTION NO. \_\_\_\_\_**

A RESOLUTION APPROVING FAYETTEVILLE POLICE DEPARTMENT POLICIES 1.1.1 LAW ENFORCEMENT AGENCY ROLE, 1.2.2 WARRANTLESS DETENTION, SEARCH AND SEIZURE, AND 1.2.4 DOMESTIC VIOLENCE

**BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF FAYETTEVILLE, ARKANSAS:**

Section 1: That the City Council of the City of Fayetteville, Arkansas hereby approves Fayetteville Police Department policies 1.1.1 Law Enforcement Agency Role, 1.2.2 Warrantless Detention, Search and Seizure, and 1.2.4 Domestic Violence. A copy of the policies, marked as Exhibit "A", is attached hereto and made a part hereof.

**PASSED and APPROVED** this 15<sup>th</sup> day of November, 2011.

APPROVED:

ATTEST:

By: \_\_\_\_\_  
**LIONELD JORDAN, Mayor**

By: \_\_\_\_\_  
**SONDRA E. SMITH, City Clerk/Treasurer**

# ***POLICIES, PROCEDURES, AND RULES***

<b>Subject:</b> 1.1.1 Law Enforcement Agency Role	<b>Effective Date:</b>
<b>Reference:</b>	<b>Version:</b> 1
<b>CALEA:</b> 1.1.1, 1.1.2, 11.3.1 a.	<b>No. Pages:</b> 3

## **I. PURPOSE**

The purpose of this directive is to require all personnel to take and abide by an oath of office, when applicable, and to abide by a code of conduct.

## **II. Policy**

By operating under an oath of office and/or code of conduct, employees will be aware of actions and attitudes expected of them, and the public will be provided with a general standard by which they can measure the department's performance.

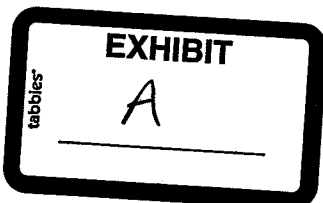
Defining the oath of office and code of conduct also specifies the department's intent to be responsive to and protect the constitutional rights of the community.

**A. Oath of Office** - Prior to assuming their official position, all personnel of the Fayetteville Police Department shall take an oath of office to enforce the law and uphold the Constitutions of the United States and the State of Arkansas. [CALEA 1.1.1]

**B. Code of Ethics** - All personnel of the Fayetteville Police Department shall abide by the following Code of Ethics and will take part in ethics training conducted on a biennial basis: [CALEA 1.1.2]

1. **LAW ENFORCEMENT CODE OF ETHICS** - All law enforcement officers must be fully aware of the ethical responsibilities of their position and must strive constantly to live up to the highest possible standards of professional policing.
2. **PRIMARY RESPONSIBILITIES OF A POLICE OFFICER** - A police officer acts as an official representative of government who is required and trusted to work within the law. The officer's powers and duties are conferred by statute. The fundamental duties of a police officer include serving the community; safeguarding lives and property; protecting the innocent; keeping the peace; and ensuring the rights of all to liberty, equality and justice. [CALEA 11.3.1 a.]
3. **PERFORMANCE OF THE DUTIES OF A POLICE OFFICER** - A police officer shall perform all duties impartially, without favor or affection or ill will and without regard to status, sex, race, religion, political belief or aspiration. All citizens will be treated equally with courtesy, consideration and dignity. Officers

**Comment:** The old policy had a section dealing with performance measures which has been removed from here and placed in 15.1, Planning & Research



will never allow personal feelings, animosities or friendships to influence official conduct. Laws will be enforced appropriately and courteously and, in carrying out their responsibilities, officers will strive to obtain maximum cooperation from the public. They will conduct themselves in appearance and deportment in such a manner as to inspire confidence and respect for the position of public trust they hold.

4. **DISCRETION** - A police officer will use responsibly the discretion invested in the position and exercise it within the law. The principle of reasonableness will guide the officer's determinations and the officer will consider all surrounding circumstances in determining whether any legal action shall be taken. Consistent and wise use of discretion, based on professional policing competence, will do much to preserve good relationships and retain the confidence of the public. There can be difficulty in choosing between conflicting courses of action. It is important to remember that a timely word of advice rather than arrest, which may be correct in appropriate circumstance, can be a more effective means of achieving a desired end.
5. **USE OF FORCE** - A police officer will never employ unnecessary force or violence and will use only such force in the discharge of duty as is reasonable in all circumstances. Force should be used only with the greatest restraint and only after discussion, negotiation and persuasion have been found to be inappropriate or ineffective. While the use of force is occasionally unavoidable, every police officer will refrain from applying the unnecessary infliction of pain or suffering and will never engage in cruel, degrading or inhumane treatment of any person.
6. **CONFIDENTIALITY** - Whatever a police officer sees, hears or learns of, which is of a confidential nature, will be kept secret unless the performance of duty or legal provision requires otherwise. Members of the public have a right to security and privacy, and information obtained about them must not be improperly divulged.
7. **INTEGRITY** - A police officer will not engage in acts of corruption, bribery, or other criminal activity, nor will an officer condone such acts by other police officers. The public demands that the integrity of police officers be above reproach. Police officers must, therefore, avoid any conduct that might compromise integrity and thus undercut the public confidence in a law enforcement agency. Officers will refuse to accept any gifts, presents, subscriptions, favors, gratuities or promises that would cause the officer to refrain from performing official responsibilities honestly and within the law. Police officers must not solicit private or special advantage as a result of their official status. Respect from the public cannot be bought; it can only be earned and cultivated.
8. **COOPERATION WITH OTHER OFFICERS AND AGENCIES** - Police officers will cooperate with all legally authorized agencies and their representatives in the pursuit of justice. An officer or agency may be one among many organizations that may provide law enforcement services to a jurisdiction. It is imperative that a police officer assists colleagues fully and completely with respect and consideration at all times.
9. **PERSONAL/PROFESSIONAL CAPABILITIES** - Police officers will be responsible for their own standard of professional performance and will take every reasonable opportunity to enhance and improve their level of knowledge and competence. Through study and experience, a police officer can acquire the

high level of knowledge and competence that is essential for efficient and effective performance of duty. The acquisition of knowledge is a never-ending process of personal and professional development that should be pursued constantly.

10. **PRIVATE LIFE** - Police officers will behave in a manner that does not bring discredit to their agencies or to themselves. A police officer's character and conduct while off-duty must always be exemplary, thus maintaining a position of respect in the community in which he or she lives and serves. The officer's personal behavior must be beyond reproach.

**C. Telephone/Current Address Information Required** - All members of the police department are required to have a working telephone and to keep the department advised of the current telephone number. Likewise, all members are required to provide the department with current address information. Any changes in phone numbers or addresses shall be promptly reported to the office of the Chief of Police.

**D.** When any sworn member of the department is unable to report for duty on account of sickness or injury, such fact shall be promptly reported to any on-duty supervisor.

**Comment:** Section C & D removed from the old Patrol Policy and placed here as it applies to all personnel, not just patrol

# ***POLICIES, PROCEDURES, AND RULES***

<b>Subject:</b> 1.2.2 Warrantless Detention, Search & Seizure	<b>Effective Date:</b>
<b>Reference:</b> 61.4.3	<b>Version:</b> 1
<b>CALEA:</b> 1.2.3, 1.2.4	<b>No. Pages:</b> 4

## **I. Purpose**

The purpose of this policy is to establish guidelines for temporary detention, warrantless search and seizure decisions by officers in order to assure they are made in a manner consistent with constitutional guidelines, federal and state laws.

**Comment:** This policy is, for the most part, entirely new. It contains some of the old FPD 1.2.2 regarding searches/seizures but has been revised to include specific protocols that had been done in practice but never documented as policy

## **II. Definitions**

**Consent:** Permission for an officer to search a constitutionally protected area given by a person with standing to grant it. Permission must be given without force, duress or coercion of any kind.

**Field Interview:** A field interview is a brief detention of a person to determine the person's identity and to resolve the officer's suspicions about possible criminal activity. A field interview is intended to resolve an ambiguous situation. A field interview contrasts with an investigative stop in that an investigative stop must be based upon reasonable suspicion of criminal behavior. A field interview may be conducted only with the voluntary cooperation of the citizen being interviewed.

**Frisk:** A frisk is a "pat down" of the outer garments for a weapon or contraband.

**Investigative Stop:** An investigative stop is the temporary detention of a subject when the officer has reasonable suspicion that criminal activity has occurred, is occurring or is about to occur and that the person to be stopped is involved or is a witness.

**Probable Cause:** Probable cause has been interpreted as facts and circumstances that amount to more than mere suspicion but less than proof beyond a reasonable doubt that would lead a prudent person to believe a crime has been committed or is about to be committed.

## **III. Procedure**

A. Field Interview – The fourth amendment allows an officer to approach a person and ask if he/she is willing to answer questions, and to ask questions if the person is willing to listen and respond. The person's voluntary answers to such questions may be offered into evidence in any subsequent criminal proceedings. [CALEA 1.2.3a]

B. Investigative Stop – An officer may temporarily detain a person if reasonable suspicion exists that a crime has been committed, is committed or is about to be committed; or the officer reasonably suspects the person is illegally carrying a concealed weapon.

1. Officers may make such stops even if probable cause is insufficient to make an arrest.
2. The following factors may be considered in determining whether reasonable suspicion exists to justify an investigative stop of a person. These factors must be considered in view of the officer's training, knowledge and experience. All of the factors need not be present in order to establish reasonable suspicion:
  - a. The officer has valid knowledge that a person has a prior felony record.
  - b. The person fits the description of a wanted person.
  - c. The person has exhibited conduct in an attempt to conceal an object from the officer's view.
  - d. The person exhibits unusual behavior.
  - e. The area or time of day is indicative of possible criminal activity.
  - f. Hearsay information or an anonymous tip is acceptable dependent upon the content of the information and the degree of reliability. An officer must corroborate some of the hearsay information when developing reasonable suspicion to conduct the investigative stop.
3. An investigative stop must be conducted as briefly as possible. The stop must be restricted only to the time necessary to confirm or dispel the officer's reasonable suspicion of criminal activity.
  - a. Upon determining the basis for the stop no longer exists, the person detained will be immediately released.
  - b. The detention period may be lengthened only if the suspicion becomes reinforced with additional supportive information or if the officer develops probable cause.
4. Field Interview (FI) Cards: Officers are encouraged to conduct field interviews as an investigative tool, crime prevention and information in collecting, preserving and disseminating information on potential suspects or criminal activity. Officers shall document all field interviews on a "Field Interview" form in order to provide other officers and investigators with information concerning suspicious activities or persons. Completed field interview cards will be submitted to the Criminal Investigation Division (CID) for entry in to the department's Records Management System.

C. Frisk – Although an officer may have reasonable cause to stop an individual, there must be a separate belief, based on articulable facts, that the subject is armed and dangerous in order to justify a frisk. The purpose of the frisk is not to discover a crime, but to allow the officer to continue the investigation without fear of violence. [CALEA 1.2.4 b]

1. The frisk is limited to a pat down of the outer clothing.
2. If bulky clothing, such as a heavy overcoat, is worn the officer may require the subject to open or temporarily remove the coat in order to complete the pat down.

D. Search Incidental to Lawful Arrest – An officer shall search a subject incidental to that subject's lawful arrest for any weapons, contraband or evidence of the crime. The search shall



be confined to the subject arrested and that subject's access area at the time of arrest [CALEA 1.2.5 commentary].

1. The search may extend beyond the arrestee's access area for other persons who the officer has reason to believe may endanger the safety of the officer making the arrest.
2. The search should be limited to locating and controlling the movements of such persons.
3. An officer should not make an arrest solely as a pretext to search for evidence.

E. Search by Consent – An officer may conduct a search of any person, place or thing without probable cause when the person having legal control over that area consents to the search. [CALEA 1.2.4 a]

1. Consent must be freely and voluntarily given. Consent must be granted by a person who appears to possess the competent mental ability and language skills to fully understand the circumstances.
2. Burden of proof consent was granted is on the officer.
3. Consent may be verbal or written. Officers must inform the subject he/she has the right to refuse a consensual search of a residence; such warning is not required for consensual search of a vehicle.
4. Consent may be withdrawn at any time by the subject.
5. Scope of the search may be limited in any way the subject wishes.
6. If the search exceeds the authorized scope, it is unlawful.

F. Officers may enter and search a constitutionally protected area under lawful exigent circumstances to include medical emergencies, or public safety issues such as violent felony in progress. This exception only extends to the termination of the emergency. [CALEA 1.2.4.e]

G. Search of Vehicle under Movable Exception Rule – Due to the inherent mobility of a motor vehicle, the courts have historically held officers to a standard of probable cause for their search. There are conditions under which the officer does not need a search warrant in order to search a motor vehicle [CALEA 1.2.4 c]

1. The passenger compartment incident to and contemporaneous with the arrest of an occupant or the officer has reason to believe the vehicle contains evidence of the offense of the arrest.
2. Based on probable cause to believe the 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 officer has a basis for a frisk of that person, the frisk may extend into the vehicle to the areas where the subject might leap or lunge for weapon.
4. An inventory shall be conducted on all vehicles impounded by this department. Reference should be made to FPD 61.4.3 [CALEA 1.2.4 f]

H. Search at the Scene of a Crime – If a crime scene includes a constitutionally protected area, and the suspect might have a reasonable expectation of privacy, it will be searched pursuant to a search warrant. Exceptions include [CALEA 1.2.4.d]

1. Officers may conduct a protective sweep of a crime scene for their protection prior to securing the scene pending a warrant or consent.
2. Upon exigent entry, the scope of any search is limited to provide aid to those believed to be in need of assistance or to secure evidence in plain view. Once aid is provided, a search warrant must be obtained before searching for evidence or contraband.
3. Constitutionally protected areas may be searched with the consent of a person with standing to give it.
4. When the suspect is arrested in the crime scene, an officer may search the area under immediate control of the suspect contemporaneous with the arrest.
5. Officers 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. This exception only extends to the termination of the emergency.

I. Strip and Body Cavity Searches [CALEA 1.2.8]

1. Strip and body cavity searches are sometimes necessary for officer safety, as well as the safety of the public, including other detainees. Such searches may be required to detect, secure and seize weapons, contraband or evidence of criminal activity.
2. Such intrusive searches shall be conducted only with proper authority, justification and within the policies and procedures of the detention center where the detainee is to be taken.

J. Other Searches authorized by State and Federal Provisions [CALEA 1.2.4 g]

1. Officers may enter an open field and search it for items subject to seizure when they have reason to believe that the stated items are to be found at that location.
2. Officers may search public places, such as a public park, when they have reason to believe that the items subject to seizure are at that location.
3. Officers may search private locations open to the public, such as the lobby of a bank, when they have reason to believe that items subject to seizure are at that location.
4. Officers may seize items that are immediately apparent as evidence when they come into view and the officers has the right to be in the area at the time.
5. Officers may search abandoned property if it can be established that the owner or person in possession of the property intended to abandon it.

# ***POLICIES, PROCEDURES, AND RULES***

<b>Subject:</b> 1.2.4 Domestic Violence	<b>Effective Date:</b>
<b>Reference:</b> 42.1.1	<b>Version:</b> 1
<b>CALEA:</b>	<b>No. Pages:</b> 3

## **I. PURPOSE**

To establish clear policy and procedural directives for officers responding to domestic violence calls.

## **II. POLICY**

It is the policy of this department to treat all acts of domestic violence as criminal conduct. Therefore, an officer's objective(s) in responding to domestic violence calls shall be to protect victims from further violence, enforce state laws against violators, and arrest offenders where applicable.

### **A. Arresting Domestic Violence Offenders**

An officer has the authority to make an arrest with or without a warrant for domestic abuse as provided in Rule 4.1 (a)(iv) of the Arkansas Rules of Criminal Procedures.

1. A law enforcement officer may arrest a person without a warrant if the officer has reasonable cause to believe that such person has committed acts which constitute domestic abuse as defined by law against a family or household member and which occurred within twelve (12) hours preceding the arrest.
2. An officer may arrest a person without a warrant for other offenses as defined by law against a family or household member that do NOT involve injury and which occur within four (4) hours preceding arrest to include arrests for Harassment, Harassing Communications, Trespassing, Assault, or Terroristic Threatening.
3. Although officers shall exercise discretion in responding to domestic violence calls, arrest shall be the preferred action in cases involving physical violence and/or domestic battering as stated in Ark. Code Ann. 16-81-113.

**Comment:** Revised language to meet statutes

**Comment:** Revised language to meet statutes

## **III. DEFINITIONS**

A. Domestic Violence - Domestic violence is generally defined as the infliction of physical harm, bodily injury or assault, or the fear of imminent physical harm, bodily injury or assault, by one family or household member on another.

B. Wife or Spouse Abuse - Wife or spouse abuse is usually defined as acts of violence or recurring assaults between sexual partners, married and unmarried, who are living together or who previously lived together.

C. The Domestic Abuse Act of 1995 - The Domestic Abuse Act of 1995 amended the statutes formerly titled "Wife Battering." They are now entitled, "Domestic Battering" and they include family and household members in the class of persons protected.

D. Family or Household Member (F/HM) - The "family or household member" relationship must be proven in any Domestic Battering crime. Ark. Code Ann. 5-26-302 defines "family or household member" as including:

1. spouses or former spouses
2. parents and children
3. persons related by blood within the fourth degree of consanguinity
4. persons who presently or in the past have resided or cohabited together.
5. Any child residing in the household
6. Persons who have or have had a child in common
7. Persons who are presently or in the past have been in a dating relationship together.

E. Physical Abuse - The act of striking, threatening, harassing or interfering with the personal liberty of any family or household member by any other family or household member, but excluding reasonable discipline of a minor child by a parent or guardian of such a minor child.

## V. ASSOCIATED OFFENSES

Although not exclusively limited to domestic abuse situations, these four crimes are frequently associated with domestic abuse and often involve family or household members.

- A. Stalking
- B. Terroristic Threatening
- C. Harassment
- D. Harassing Communications

**Comment:** Streamlined section V to only list the crimes, not the elements of each and varying degrees of each

## VI. PROCEDURES

1. Patrol Responsibilities – When possible, priority will be given to domestic disputes. Officers will respond immediately and coordinate their approach with the appropriate backup. Officers should obtain all available information from the dispatcher before arriving at the scene.
2. The Decision to Arrest - Officers shall affect an arrest, based on probable cause and supported by the statements of the victim or witness, of abusers in domestic situations in the following circumstances:
  - a. where a felony has been committed;
  - b. where the officer is aware of a past history of assaults committed by the abuser and there is probable cause to believe another assault has occurred;
  - c. where a physical assault has occurred and there is evidence of either alcohol or drug abuse;

- d. where any weapon was used to inflict the injury, or was used to intimidate or threaten the victim;
  - e. where an assault has occurred and, if the officer takes no action, there is strong likelihood that further violence or injury might result;
  - f. in cases where the conditions of a protective order have been violated;
  - g. offenses committed in the presence of the officer; or
  - h. where there are valid warrants on file.
3. Protective Orders - Orders of Protection are generally issued by the court when domestic violence has occurred. There are three types of court orders typically used to protect victims of domestic abuse:
    - a. Orders of Protection
    - b. Mutual Restraining Orders
    - c. No Contact conditions of release.
  4. Enforcement of Arkansas Orders - Orders of Protection issued in any Arkansas court shall be enforced by law enforcement wherever a violation occurs. An Arkansas order is valid throughout the state, regardless of which court issued the order.
  5. Enforcement of Out of State Orders – Orders of Protection issued by courts located outside of Arkansas will be enforced in Arkansas, provided the form of the order meets the "full faith and credit" requirements; Ark. Code Ann. 9-15-302 requires the issuing court must have had valid jurisdiction, the respondent must have had reasonable notice and opportunity for a hearing, and evidence of this is found on the face of the order.
  6. Violations of Orders of Protection - When orders of protection are violated, the enforcement procedures differ according to the type of order and the issuing court.
    - a. Violation of an order of protection is a separate criminal offense charged when an order of protection (issued by the chancery court) is violated. Under this statute, a law enforcement officer can make a warrant less arrest if the officer has probable cause to believe a person:
      - (1) Is the subject of an order of protection and
      - (2) Has violated the terms of the order, even if the officer did not witness the violation. (NOTE: An officer exercising due care and acting in good faith in making an arrest for domestic abuse has immunity from civil liability.)
    - b. ACIC Requirements - The Arkansas Crime Information Center maintains a registry of all orders of protection and temporary orders of protection issued by a state court, or registered in the state.
  7. Document the incident in a full investigative report to include gathering physical evidence and recording the scene, see FPD 42.1.1.

**Comment:** Language streamlined to make it more concise

