CITY OF KEMAH POLICE DEPARTMENT			
POLICY:	**7.1 Constitutional Safeguards**		
EFFECTIVE DATE:	**January 27, 2022**		
REPLACE DATE:	**N/A**		
APPROVED:	*Chief H. D. Jones*	**REFERENCE:**	TBP: 7.04

I. POLICY

The federal and state constitutions guarantee every person certain safeguards from unreasonable 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 policy 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 the circumstances under which officers should exercise alternatives to arrests and pretrial confinement.

III. THREE LEVELS OF ENCOUNTERS

There are only three levels of encounters between civilians and police officers: consensual encounters, temporary detentions, and arrests. Detentions and arrests are considered seizures of the person for purposes of constitutional analysis.

In order to be lawful a consensual encounter must be voluntary as seen through the eyes of a reasonable person. In other words, if a reasonable person would not believe he or she could simply walk away from the encounter, then the encounter shall be considered a seizure by the courts.

In order to be lawful a temporary detention must be based upon reasonable suspicion, i.e. specific, articulable facts and circumstances that would lead a reasonable officer to conclude criminal activity is afoot.

In order to be lawful and arrest must be based upon probable cause, i.e. specific articulable facts and circumstances that would lead a reasonable officer to conclude a specific person had committed a specific crime.

Reasonable suspicion and probable cause are evaluated by analyzing the totality of the information known to the officer at the moment the person is seized. Information discovered incident to a detention or an arrest cannot retroactively support the seizure.

IV. PROBABLE CAUSE AND REASONABLE SUSPICION

A. Probable Cause: in all circumstances an officer must have probable cause to make an arrest. Probable cause is also required in most circumstances to search, but there are some exceptions to that requirement.

1. 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." See 7.3 for additional information.

2. When an officer has sufficient probable cause, he or she may arrest or, in certain circumstances, search a person. The purpose of an arrest is to make a formal charge. While formal charges may not be filed for any number of reasons, officers should make a custodial arrest only if a formal charge is anticipated.

3. The test for evaluating the existence of probable cause is based on the totality of the circumstances known to the officer at the moment of the arrest.

B. Reasonable Suspicion: An officer must have reasonable suspicion to temporarily detain a person. The purpose of a detention is to further the investigation into potential criminal activity

1. Reasonable suspicion involves a somewhat lower standard 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. The same types of facts and circumstances which can be used to build probable cause can also be used to build reasonable suspicion. The test for evaluating the existence of reasonable suspicion is the same test used to evaluate probable cause: the totality of the circumstances known to the officer at the moment of the detention.

2. When an officer has reasonable suspicion, he or she may detain a person for a temporary period of time during which time the officer must work efficiently towards confirming the need for the continued detention of the person, or the release of the person detained. Officers have greater authority to detain a suspect in a crime as opposed to a witness to an offense. “Temporary period of time” shall mean only that relatively brief amount of time that an officer may detain a person so the officer may initiate or continue the investigation, having reasonable suspicion to believe the person is involved in the criminal activity. Once the officer has determined that he or she has insufficient facts and circumstances to establish probable cause or

is not likely to obtain sufficient facts or circumstances to establish probable cause, the officer shall release the person.

3. Frisk authority: officers do not have the authority to automatically frisk a person who has been detained. The frisk has one lawful purpose – to ensure the safety of the officer. In order to support a claim that the officer was at risk the frisking officer must articulate what the detainee was doing at that moment in time that caused the officer to be concerned for his or her safety.

V. AUTHORITY AND DISCRETION

A. Law-enforcement authority: State law invests peace officers with authority to prevent crime, apprehend criminals, safeguard life and property, and preserve the peace. These goals are accomplished by enforcing state and local laws and ordinances. Texas restricts a peace officers' authority with regards to making warrantless arrests. In order to effect a warrantless arrest under Texas law an officer must have probable cause to believe the person to be arrested committed the offense and there must be a specific statute which authorizes the warrantless arrest in that situation. Warrantless arrest authority is found primarily in Chapter 14 of the Code of Criminal Procedure but is also found in other statutes. It is the officer's responsibility to confirm that such statutory authority exists.

B. The use of discretion by officers

1. While officers have the authority to arrest an offender under many circumstances, they seldom are able to make an arrest 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. Officers should understand that their decisions regarding arrests and searches are in all cases subject to review by their supervisors. Additionally, these decisions are subject to review by prosecuting attorneys, defense attorneys, and judges.

4. Supervisors shall observe and review the activities of officers and counsel them as needed regarding the use of discretion. In addition to

counseling, officer's decisions are subject to review and discipline through the chain of command.

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. Officers shall only make warrantless arrests in situations authorized by state law. In all other situations officers shall obtain an arrest warrant.

   If the immediate arrest of a suspect is not advisable due to the suspect's health, age, infirmity, or family situation, the officer should contact a supervisor for disposition. A supervisor or the Chief of Police can authorize the officer to release the individual and seek a warrant for an arrest at large. Once the arrest is made and the suspect is transported to jail, the officer may contact the magistrate to see if the individual can be released on his own recognizance.

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.

   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/herself.

3. Officers often deal with situations where the public interest would be better served by social service agencies or crisis and professional organizations. In such cases the officer may refer the person to an appropriate social services agency, if the person is agreeable to such a referral.

4. 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.

III. PROTECTION OF INDIVIDUAL RIGHTS

A. Officers will at all times act to preserve and protect the rights of all persons. Officers shall at all times honor a suspect's decision to remain silent and a suspect's unambiguous request for an attorney. Any resumption of questioning shall be in accordance with applicable state and federal law.

B. Miranda warnings are required prior to any custodial interrogation. A custodial interrogation occurs when a person is not free to leave and is asked questions that are intended to elicit an incriminating response. Officers are expected to understand the requirements of the Code of Criminal Procedure, articles 38.22 and 2.32 before taking any statements from suspects. All custodial interrogations shall be videotaped and audiotaped. If the custodial interrogations are not recorded, the officer conducting the interrogation shall explain why in the officer's report.

1. Listed below are representative examples of situations that may not require a Miranda warning;

    a. Questioning during a routine traffic stop or for a minor violation, which includes driving while intoxicated (DWI) stops until a custodial interrogation begins. Such questions may include, but are not limited to, inquiries about: vehicle ownership, the driver's destination, the purpose of the trip, and insurance documents. Any questions focusing on the person's participation in criminal activity may require warnings.
    b. 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 when a suspect is not in custody but is responding to questions designed to elicit incriminating responses.
    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. This card will be provided to patrol officers. Officers shall confirm that the warning text on the card matches the

warning language found in article 38.22 of the Code of Criminal Procedure.

b. Freelancing, recitation from memory, or paraphrasing the warnings is prohibited because it precludes officers from testifying in court as to the precise wording used.
c. 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 acknowledged they understand their rights and have affirmatively waived those rights. Threats, false promises, or coercion to induce suspect statements are prohibited.
d. Waivers of the Miranda rights must be performed affirmatively and shall be audio or video recorded as required by state law. If a recorded statement is not an option the statement shall be in writing as required by state law.
e. 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.
f. The administration of the Miranda warning shall be recorded. State law prescribes those circumstances under which a non-recorded statement might be admissible. Officers shall comply with state law in these matters.

Policy Implementation Ordered By:

Chief Holland D. Jones
Chief of Police

01/27/2022
Effective Date: