



PAWNEE COUNTY SHERIFF'S OFFICE
SHERIFF DARRIN VARNELL

Policy # Stop, Arrest, and Search of Persons	Related Policies:
<i>This policy is for internal use only and does not enlarge an employee's civil liability in any way. The policy should not be construed as creating a higher duty of care, in an evidentiary sense, with respect to third party civil claims against employees. A violation of this policy, if proven, can only for the basis of a complaint by The Pawnee County Sheriff's Office for non-judicial administrative action in accordance with the laws governing employee discipline.</i>	
Applicable Oklahoma Statutes: §22-189. Arrest, when made.	
CALEA Standard: 1.2.4, 1.2.5	

- I. **Purpose:** The purpose of this policy is to direct the members of The Pawnee County Sheriff's Office on the lawful limits of authority with respect to contacts with persons.
- II. **Policy:** The policy of The Pawnee County Sheriff's Office is to protect and serve the constitutional rights of all citizens when stopping, arresting or searching individuals while balancing the needs of law enforcement in solving crime for the protection of the community.
- III. **Definitions:**
 - A. **Probable Cause: (search):** Facts and circumstances based upon observations or information that would lead a reasonable law enforcement officer to believe that evidence of crime exists and that the evidence exists at the place to be searched.
 - B. **Probable Cause: (arrest):** Facts and circumstances based upon observations or information that would lead a reasonable law enforcement officer to believe that a crime has been or is being committed and the person to be arrested is the one who is or has committed the crime.
 - C. **Reasonable Suspicion (temporarily detain):** Facts and circumstances based upon observations or information, short of probable cause but based upon articulated facts that would lead a reasonable law enforcement officer to believe that criminal activity is afoot.
 - D. **Reasonable Suspicion (frisk):** Facts and circumstances based upon observations or information, short of probable cause but based upon articulated facts that would lead a reasonable law enforcement officer to believe that a person who is lawfully stopped is in possession of a weapon.

- E. Frisk (weapon):** A limited type of search, the limit being to those areas capable of holding a weapon and located within the subject's immediate area of control.
- F. Strip search:** The removal or rearrangement of clothing that results in the exposure or observation of a portion of the genitals, the buttocks, or the breasts of a female.
- G. Consensual Contact:** An interaction between a member of law enforcement and the public that is voluntary in nature. The law enforcement member has shown no authority that would cause a reasonable person to believe that they had no choice but to respond or comply with the officer's efforts. Under this type of contact, an officer has no power to detain an individual who chooses not to participate in the contact.
- H. Arrest:** Arrest is the taking of a person into custody, that he may be held to answer for a public offense.

IV. Procedures:

- A.** If the offense charged is a felony, the arrest may be made on any day, and at any time of the day or night. If it is a misdemeanor, the arrest may be made only during the hours of six o'clock a.m. to ten o'clock p.m., inclusive, except as otherwise may be directed by the magistrate endorsed upon the warrant. Provided, an arrest on a warrant which charges a misdemeanor offense may be made at any time of the day or night if the defendant is in a public place or on a public roadway. §22-189. Arrest, when made.
- B.** The officer must inform the defendant that he acts under the authority of the warrant, and must also show the warrant within a reasonable time under the circumstances, if requested. §22-192. Officer must show warrant.
- C.** If, after notice of intention to arrest the defendant, he either flee or forcibly resist, the officer may use all necessary means to effect the arrest.
- D.** A peace officer may, without a warrant, arrest a person:
 - a. For a public offense, committed or attempted in the officer's presence;
 - b. When the person arrested has committed a felony, although not in the officer's presence;
 - c. When a felony has in fact been committed, and the officer has reasonable cause to believe the person arrested to have committed it;
 - d. On a charge, made upon reasonable cause, of the commission of a felony by the party arrested;
 - e. When the officer has probable cause to believe that the party was driving or in actual physical control of a motor vehicle involved in an accident within this state, whether upon public roads, highways, streets, turnpikes, other public places, or upon any private road, street, alley or lane which provides access to one or more single- or multi-family dwellings and was under the influence of alcohol or intoxicating liquor or who was under the influence of any substance included in the Uniform Controlled Dangerous Substances Act;
 - f. Anywhere, including a place of residence of the person, if the peace officer has probable cause to believe the person within the preceding seventy-two (72) hours has committed an act of domestic abuse as defined by Oklahoma Statutes Section

60.1, although the assault did not take place in the presence of the peace officer. A peace officer may not arrest a person pursuant to this section without first observing a recent physical injury to, or an impairment of the physical condition of, the alleged victim;

- g. When a peace officer, in accordance with the provisions of Oklahoma Statutes Section 60.9, is acting on a violation of a protective order offense; or
- h. When the officer has probable cause to believe that the person has threatened another person as defined in subsection B of Section 1378 of Title 21 of the Oklahoma Statutes.
 - a. Consensual Contact - An officer may approach anyone and attempt a consensual contact.
 - i. Deputies are not required to have reasonable suspicion for this type of contact.
 - ii. Deputies may not take any steps through words or conduct to stop the person's movement under this type of stop.
 - iii. A person cannot be compelled in any way to participate in the stop.
 - b. Reasonable Suspicion Based Stops/Terry Stops-An officer who is aware of facts and circumstances that would lead a reasonable police officer to conclude that criminal activity is afoot, may stop a person, using reasonable force short of deadly force, and detain the person for a reasonable amount of time to investigate further.
 - i. Deputies may detain the person for a reasonable amount of time at the location of the stop while a diligent investigation is conducted such that the officer has an opportunity to confirm or dispel their suspicion.
 - ii. Anonymous tips that merely describe a person's location and physical/clothing description without providing a prediction of the subject's future actions that can be corroborated by the police prior to contact are insufficient to justify a stop or frisk.
 - iii. The duration of the stop should not exceed the amount of time that it would normally take to investigate the conduct that the officer suspected at the time the stop was made.
 - iv. Deputies may not frisk every person who is stopped in accord with this policy. An officer may only frisk those individuals for whom the officer has reasonable suspicion to believe is armed with a weapon.
 - c. **Reasonable Suspicion-Based Frisk:** An officer may conduct a limited frisk/pat-down of a person's outer clothing when the officer has reasonable suspicion to believe that a person who has been lawfully stopped is in possession of a weapon that poses a danger to the officer or others present.
 - i. Items that may support reasonable suspicion:
 - 1. The type of crime for which the stop is based is one that would lead a reasonable officer to conclude generally involves a weapon.

2. The officer observes a bulge in the subject's clothing that has the appearance of a weapon.
 3. The officer has information (anonymous tip merely providing description and location is not enough) indicating that a person is armed.
 4. The officer is aware of the subject's history of carrying weapons.
 5. The officer observes the subject reach as if reaching for, or reaching to hide a weapon (furtive movements).
- ii. The frisk is limited to a pat-down of the outer-clothing and does not include reaching into pockets etc. unless the officer feels an item during the frisk that the officer reasonably believes is a weapon.
 - iii. **NOTE:** If the person to be arrested is in a dwelling-refer to Home Search Policy/ If the person to be arrested is in a vehicle-refer to vehicle search policy.
- d. Search Incident to Arrest of a Person:
- i. When an officer arrests a person on the street, the officer may conduct a thorough search of the subject's person (not strip search).
 - ii. Cross-gender pat-downs and searches are restricted to those circumstances where exigent circumstances are present and no officer of the subject's gender is available to conduct the search.
 - iii. The purpose of this search is the following:
 1. Protecting the officer from attack;
 2. Preventing the person from escaping;
 3. Discovering or seizing the fruits of the crime for which the person has been arrested; or
 4. Discovering or seizing any instruments, articles, or things that was used or which may have been used in the commission of the crime for which the person has been arrested.
 - iv. This search may include the subject's pockets as well as any items they are in possession of at the time of the arrest.
 - v. Cell phone search incident to arrest: Deputies are required to obtain either consent from the arrestee, a court authorized search warrant, or articulate the existence of exigent circumstances before a cellular phone or hand-held device is opened and searched. *(For search incident to arrest in home-see home search policy-for incident to arrest search in vehicle see motor vehicle contacts policy)
 - vi. When the peace officer is in the process of effecting a lawful search, he may discover or seize any stolen or embezzled property, any item, substance, object, thing, or matter, the possession of which is unlawful, or any item, substance, object, thing, or matter, other than the private papers of any person, which is tangible evidence of the commission of a crime against the laws of this state.

e. Privilege from Arrest:

i. Diplomatic and Consular Immunity

1. Background. Diplomatic immunity is a principle of international law by which certain foreign government officials are not subject to the jurisdiction of local courts and other authorities for both their official and their personal activities. It should be emphasized, however, that even at its highest level, diplomatic immunity does not exempt diplomatic Deputies from the obligation of conforming to national and local laws and regulations.
2. Categories of persons entitled to diplomatic immunity are as follows:
 - a. Diplomatic Agent: Enjoys the highest degree of privileges and immunity. Diplomatic Agents may not be handcuffed (except in extraordinary circumstances), arrested, or detained for any criminal offense. Generally, they are immune from any civil suits, but are not immune from receiving a citation/summons. Family members of these persons enjoy the identical privileges and immunity.
 - b. Diplomatic Administrative and Technical Staff: Enjoy privileges and immunity similar to Diplomatic Agents. Diplomatic Administrative and Technical Staff may not be handcuffed, arrested, or detained for any criminal offense. They enjoy immunity from civil suits arising in connection with the performance of their official duties. Deputies may issue a citation for a motor vehicle violation. Family members enjoy identical privileges or immunity.
 - c. Diplomatic Service Staff: They are accorded few privileges and immunities. Diplomatic Service Staff may be arrested or detained for criminal offenses. They enjoy immunity from civil suits arising in connection with the performance of their official duties. Deputies may issue a citation for traffic violations. Family members enjoy no privileges or immunities.
 - d. Consular Deputies: Enjoy privileges and immunity from criminal and civil matters arising from their performance of official duties. Consular Deputies may be arrested or detained, pursuant to an arrest warrant, for felony offenses. They may be prosecuted for misdemeanors, but may not be arrested or detained prior to trial or other disposition of charges. Deputies may issue a citation for traffic violations. Generally, family members enjoy no privileges or immunity.
 - e. Consular Employees: Enjoy privileges and immunity from criminal and civil matters arising from their

performance of official duties. Consular Employees may be arrested or detained for criminal offenses. Deputies may issue a citation for traffic offenses. Family members enjoy no privileges or immunity.

- f. Honorary Consuls: Enjoy privileges and immunity from criminal and civil matters arising from their performance of official duties. Honorary Consuls may be arrested or detained for criminal offenses. Deputies may issue a citation for a traffic offense. Family members enjoy no privileges and immunity.

ii. Procedure for Notification When a Foreign National is arrested.

1. Determine the foreign national's country. In the absence of other information, assume this is the country on whose passport or other travel documents the foreign national travels.
2. All foreign nationals must be told of their right to Consular notification.
3. If the foreign national's country is not on the mandatory notification list:
 - a. Offer, immediately, to notify the foreign national's consular officials of the arrest/detention.
 - b. If the foreign national asks that consular notification be given, notify the nearest consular officials of the foreign national's country immediately.
4. If the foreign national's country is on the list of mandatory notification countries:
 - a. Notify that country's nearest consular officials, without delay, of the arrest/detention. Tell the foreign national that you are making this notification
5. Keep a written record of the provision of notification and actions taken.