

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

UNITED STATES OF AMERICA,)	CASE NO.: 1:15-CV-01046
)	
Plaintiff,)	
)	JUDGE SOLOMON OLIVER, JR.
vs.)	
)	<u>MOTION TO APPROVE SEARCH AND</u>
CITY OF CLEVELAND)	<u>SEIZURE TRAINING CURRICULUM</u>
)	
Defendant.)	
)	
)	

Pursuant to Paragraph 173 of the Consent Decree and the Fourth Year Monitoring Plan in the above-captioned matter, the City of Cleveland (the “City”), on behalf of the Cleveland Division of Police (“CDP” or “Division”), submitted a proposed curriculum for its Search and Seizure Training to the Monitoring Team, consisting of an Introduction, Module #1 – Citizen Contacts, Module #2 – Consent/Residential Searches, and Module #3 – Warrantless Arrests (together, “Proposed Training Curriculum”), attached hereto respectively as Exhibits A through D.

The Monitoring Team has carefully reviewed the Proposed Training Curriculum. The Team has determined that it provides sufficient guidance for CDP officers to understand the Division’s revised Search and Seizure policies through a variety of effective adult learning techniques, particularly through interactive roleplay exercises that allow officers to better

understand legal subjects that can be difficult to learn and put into practice. The Monitoring Team therefore recommends that the Court approve CDP's Search and Seizure Training Curriculum.

I. SUMMARY OF CONSENT DECREE REQUIREMENTS REGARDING SEARCH AND SEIZURE TRAINING

Paragraph 173 of the Consent Decree requires that "CDP [] provide all officers with initial training . . . on investigatory stops, searches, and arrests, including the requirements of this Agreement." The training must "address the requirements of the Fourth Amendment and related law, CDP policies, and this Agreement, including:

- a. "the difference among the scope and degree of intrusion associated with different types of police contacts; the difference between probable cause, reasonable suspicion, and mere speculation; and the difference between voluntary consent and the mere acquiescence to police authority;
- b. "the types of facts and circumstances that may be considered in initiating, conducting, terminating, and expanding an investigatory stop;
- c. "the level of permissible intrusion when conducting searches, such as 'pat-downs' or 'frisks';
- d. "the permissible nature and scope of searches incident to an arrest;
- e. "procedures for executing searches, including handling, recording, and taking custody of seized property and evidence; and
- f. "the principles of procedural justice and the effect that differing approaches to investigatory stops, searches, and arrests can have on community perceptions of police legitimacy and public safety."

Dkt. 7-1 at ¶ 173.

II. PROCEDURAL HISTORY

The Search and Seizure curriculum has spent a long time in development. The Monitoring Team first reviewed a draft curriculum in March 2018 and provided detailed comments, but also indicated that the Division's focus should be on the development of the Search and Seizure policies, rather than the training to implement them. The policies were filed with the Court and approved on May 16, 2019. Dkt. 261.

The Monitoring Team provided additional technical assistance on an updated draft curriculum on February 28, 2019. The Division provided the next draft on April 9, 2019, followed by numerous iterations through the end of July. During this time, multiple in-depth discussions were held with CDP command staff, members of the Training Section, the Department of Justice, and the Monitoring Team. Additionally, the Cleveland Community Police Commission provided several important substantive suggestions. The Division worked hard to incorporate the recommendations from the different stakeholders.

However, the development process faced some challenges. During the process, the Monitoring Team flagged concerns about the curriculum, including adequate training on the new policies themselves, lack of clear guidance to instructors to ensure clarity and consistency, confusing application of law, and inadequate integration of adult learning standards.

In early July 2019, the Monitoring Team arranged for external technical assistance from a consultant, using the Monitoring Team's budget, to help develop the training and provide significant input on adult learning strategies. The Division reworked the training significantly and provided updated drafts on July 15, 2019. On July 19, 2019, the Monitoring Team provided final technical assistance by way of a deep dive into the training curriculum with CDP's Training Section. Following this discussion, the Monitoring Team signaled greater optimism about the probable success of the training and acknowledged the hard work of the Division, especially the Training Section.

On August 22, 2019, after incorporating a final round of feedback, CDP submitted the current Proposed Training Curriculum to the Monitoring Team and Department of Justice.

III. STANDARD OF REVIEW

The Monitoring Team's role is to "assess and report whether the requirements" of the Consent Decree "have been implemented." Dkt. 7-1 at ¶ 351; *accord id.* ¶ at 352 (requiring the Monitor to "review . . . policies, procedures, practices, training curricula, and programs developed and implemented under" the Decree). The task of the Monitoring Team here is to determine whether the Proposed Training Curriculum complies with the Consent Decree's requirements.

IV. ANALYSIS OF THE SEARCH AND SEIZURE TRAINING

The Division's Search and Seizure Training Curriculum is a six-hour block of training designed to instruct all CDP officers on the revised Search and Seizure policies. The Division's Search and Seizure policies, revised to meet the terms of the Consent Decree, were approved by the Court on May 16, 2019. Dkt. 261. The curriculum is composed of an Introduction and three modules addressing specific CDP protocols around stops, searches, and arrests. The Division began training officers using the current curriculum on July 30, 2019.

The Introduction module defines important terms such as consensual encounters, non-custodial interviews, seizure, search, reasonable suspicion, and probable cause—terms important not only to substantively understand the policies and protocols, but also for officers to follow along throughout the training. Ex. A at 10-11. The curriculum references other important training initiatives within the Division, such as the Community Engagement and Problem-Solving training, to help officers to get a better context of how the new Search and Seizure training fits within CDP's broader training schema.

Module #1 focuses on citizen contacts, including factors that can turn consensual encounters into a seizure or detention and protocols that CDP officers must follow once a seizure occurs. Ex. B at 4. It primarily uses a roleplay exercise in which officers respond to a call for service over the radio. There are detailed debriefing discussion points, highlighting to officers

how certain behavior during the roleplay can turn a non-custodial interview into a detention or arrest. *Id.* at 8-9. This scenario also reinforces the overlap between community policing and search and seizure by providing officers a “path to success” without utilizing any type of seizure.

Module #2 focuses on consent and residential searches, with officers expected to understand “if they are legally justified to enter private property, seize an individual and/or search a residence[.]” Ex. C at 1. It includes specific topics such as “factors that would legally justify encroaching on a property owner[']s curtilage” and “factors that legally permit an investigatory stop and a probable cause arrest[.]” *Id.* at 4. The module uses a roleplay exercise in which two officers are dispatched to investigate a report of a male shooting a firearm into the air in his backyard. Following the curriculum, instructors ask the class about, among other things, the legal basis for the contact; telling the subject the stop is being recorded; the issuance of a Miranda warning; the articulation of facts and circumstances that led to the arrest; and the need for a search warrant to enter the residence to retrieve firearms. *Id.* at 8-10.

Module #3 focuses on warrantless arrests, or when officers are legally justified to “seize an individual and conduct a pat down or search of persons or places[.]” Ex. D at 1. The module focuses on the reasonable suspicion standard; factors that raise an encounter from reasonable suspicion to probable cause; and the difference between a pat down/frisk and a search incident to arrest. *Id.* at 4. In the roleplay exercise, two officers in a patrol car get flagged by a victim of a robbery, and the officers encounter an individual matching the physical description provided by the robbery victim. Following the exercise, instructors ask the class about the existence of reasonable suspicion to stop the suspect; how to write a report for the initial encounter; and the use of any coercion during the course of the encounter. *Id.* at 9-10.

Overall, the training uses a commendable variety of adult learning techniques, including question-and-answer, interactive exercises, large group discussions, and handouts. Members of the Monitoring Team have observed several sessions, each with many iterations of each scenario, and were impressed by the quality of the training. Based on these sessions, CDP instructors have done an impressive job of elevating the curriculum to engaging and effective instruction.

Despite the arduous process of developing the curriculum, the end result demonstrates that CDP instructors have done an excellent job translating the curriculum into an effective and valuable training for the Division. The decision to partner with the City Prosecutors' Office and have a City Attorney present to discuss and analyze complex legal issues in real-time was an excellent choice. Having observed the high quality delivery of the curriculum, the Monitoring Team is satisfied with the final product, with the caveat that the Team will continue to work with the Division to increase the capacity and resources of the Training Section to ensure that CDP can create and deliver trainings with less hands-on involvement from the Monitoring Team in the future. The City and CDP have already promised that substantial resources to the Training Unit will be forthcoming.

V. CONCLUSION

The task of the Monitoring Team is to duly consider whether the City's submitted Proposed Training Curriculum satisfies the terms of the Consent Decree. The Monitoring Team concludes that the Proposed Training Curriculum meets the terms of the Consent Decree. Accordingly, the Monitoring Team approves CDP's Search and Seizure Training Curriculum in its entirety and requests that this Court order it effective immediately.

Respectfully submitted,

/s/ Hassan Aden

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CERTIFICATE OF SERVICE

I hereby certify that on September 27, 2019, I served the foregoing document entitled Motion to Approve Search and Seizure Training Curriculum via the court's ECF system to all counsel of record.

/s/ Ayesha Bell Hardaway
AYESHA BELL HARDAWAY

EXHIBIT A

**Search and Seizure
2019 Introduction
Cleveland Division of Police**



Course Date: July 2019 - December 2019

Current Revision Date: July 27, 2019

Course Hours: 1 Hour

Primary Audience: All Officers of the Cleveland Division of Police

Module Goal: To give officers an overview of the new search and seizure policies and emphasize the importance of knowing how to apply these policies and concepts in the course of their everyday duties.

REFERENCES

1. Cleveland Division of Police GPO Search and Seizure
2. Cleveland Division of Police GPO Investigatory stops
3. Cleveland Division of Police GPO Probable Cause / Warrantless Arrest
4. Cleveland Division of Police GPO Strip Searches & Body Cavity Searches
5. Cleveland Division of Police GPO Miranda Warning and Waiver
6. <https://legaldictionary.net/arizona-v-gant/>

COURSE MATERIALS

TEACHING AIDS

- Erasable Board/Markers Easel/Notepads
 Lectern/Table
 Other:
 Student Handouts

INSTRUCTIONAL TECHNIQUES

- Lecture Group Discussion
 Demonstration Scenario-based Training
 Individual Exercise Hands-on Techniques
 Problem Solving

iv. Daily Schedule below:

0800-0900	Introduction
0900-1040	Module #1
1040-1100	Switch out guns
1100-1200	Lunch
1200-1340	Module #2
1350-1530	Module #3
1530-1600	Review

d. Training expectations

i. **Explain to the class:**

1. You are expected to take an active role in training and fully participate in this on-going professional education.
2. You will get the most out of the training and help you understand the concepts if you take an active role
3. Class participation is mandatory
4. All three modules will assess your understanding of the policy
5. Everyone will be evaluated by
 - a. Class participation
 - b. Performance check sheet
 - i. Yes / No
6. Don't Forget what you learned in;
 - a. Use of Force training
 - i. De-escalation techniques
 - ii. Calling resources
 - iii. Levels of resistance
 - iv. Officers shall only use the amount of force necessary to achieve a lawful objective
 - b. CPOP
 - i. Making community deposits
 - ii. Treat everyone with courtesy, professionalism, dignity, respect, and equality
 - c. Bias Free
 - i. Fast traps
 - d. CIT
 - i. Where appropriate, making referrals in lieu of arrests
 - ii. Individuals in crisis who are being charged with a misdemeanor or minor misdemeanor may be issued a

PPT#5

PPT #6

GPO 5.11.03(III, 7,b)

<p>summons or made a named suspect in lieu of arrest.</p> <ul style="list-style-type: none">ii. If the student does not perform satisfactorily then they will receive remedial training so that they understand the conceptsiii. If the student does not participate in the training then they will be sent back to their district/unit and their commander will be notifiediv. Explain to class: This is your training, your level participation will increase your knowledge and skills	<p>PPT #7</p>
<p>III. Chief's Video</p> <div data-bbox="243 802 1042 961" style="border: 1px solid black; padding: 5px;"><p>Ask the class if they have any questions on the Chief's Video. Be prepared to reinforce the Chief's parting thought" a well-trained officer will result in better service to the citizens and a safer community."</p></div> <div data-bbox="243 978 1042 1264" style="border: 1px solid black; padding: 5px;"><p>At this point in the lesson the instructor will provide a forum for an open discussion. The instructor will ask the below questions with an emphasis on highlighting major policy changes. This discussion will provide the student an opportunity for a teach-back to validate they understand the major policy changes. Discussion will include changes to the policy, how these policy changes increases our professionalism and community perceptions.</p></div>	<p>PPT #8</p>
<p>IV. Highlighting some changes in the new policy</p> <ul style="list-style-type: none">a. Ask the class-Under the new policy what information is required to give an individual under an investigatory stop? Have the class call out answers: (correct responses below)<ul style="list-style-type: none">i. Officers full name and badgeii. The fact the officer is a Cleveland Police Officeriii. The reason for the stopiv. The fact that the stop is being recorded, if applicableb. Ask the class-how does this information increase the public's trust and confidence in the police? Have the class call out answers: (correct responses below)<ul style="list-style-type: none">i. Provides people with a sense of dignity and respectii. Legitimizes the police action that is taking place<ul style="list-style-type: none">1. <i>If you were stopped on the street wouldn't you want to know why the stop was taking place</i>iii. Wherever time and circumstance permit, officers shall	<p>PPT #9</p> <p>PPT #10</p>

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<p>listen to the individual and answer any reasonable questions that the individual has relating to the interaction</p> <ul style="list-style-type: none"> 1. This provides them with a voice during the encounter <p>c. Question to the class “When was the last time CDP’s investigatory stop policy was updated?”</p> <ul style="list-style-type: none"> i. Answer-2002 <ul style="list-style-type: none"> 1. This is a good time to ask the class “Do you think search and seizure procedures have changed in the last 17 years?” 2. Solicit student feedback by asking “who was on the job in 2002” 3. By updating policy this tells the community that the Division is progressing in the area of search and seizure <p>d. Question to the class “Can anyone find the definition of Probable Cause in our current (Search and Seizure) General Police Orders?”</p> <ul style="list-style-type: none"> i. Answer-Probable Cause is not defined in our Current (Search and Seizure) General Police Order ii. This is a good time to have an open discussion with the class. Explain to the class that the new Search and Seizure policies while it appears large and complex, clarity is provided to you in the form of definitions and other resources. Examples are guidance on speaking to juveniles in an age appropriate manner, how to respectfully handle the search of a person wearing a religious garment and when and how to conduct a strip search <p>e. Search and seizure is highly complex, nuanced issue</p> <p>f. As we all know case law could change every day</p> <p>g. Prior to this policy change, definitions relating to search and seizure issues were often sporadic or placed into Divisional Notices and disseminated throughout the division with no formal training</p> <p>h. Ask the class-Has anyone ever had a case thrown out or evidence suppressed due to the application or timing of Miranda Warnings</p> <ul style="list-style-type: none"> i. Solicit feedback and ask for clarity in responses ii. Explain that this new policy clarifies Miranda’s where, when and how <ul style="list-style-type: none"> 1. A subject is in custody and the officer is to question or interrogate the individual about any crime 	<p><i>PPT #11</i></p> <p><i>PPT #12</i></p> <p><i>Arizona v Gant</i></p> <p><i>The Division will continue to distribute this information via Divisional Notice</i></p> <p><i>PPT #13</i></p>
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<ul style="list-style-type: none"> a. This increases transparency and understanding about the Miranda Warning on the part of the citizen b. Protects the public against involuntary self-incrimination <p>2. The instructor will explain case specific requirements from Miranda Warnings</p> <ul style="list-style-type: none"> a. Deaf and Hard of Hearing b. Individuals with Limited English Proficiency c. Juveniles <p>i. Question to the class- Is a vehicle stop for a traffic code violation an investigatory stop? Answer-no</p> <ul style="list-style-type: none"> i. An officer shall have probable cause to conduct a vehicle stop for a traffic code violation or completed misdemeanor 	<p><i>PPT #14</i></p>
<div style="border: 1px solid black; padding: 10px; margin: 10px auto; width: 80%;"> <p>Initiate a Large Group Discussion: Ask class-How do the new policies assist in an overall crime prevention strategy that takes into account community values- solicit feedback from students- answers below</p> </div>	<p><i>PPT #15</i></p>
<p>V. We must begin to re-define ourselves as a police agency</p> <ul style="list-style-type: none"> a. As much community input as we have in forming these new policies, we are striving to educate the community on police procedure b. We learned in Community Engagement and Problem Solving “Adverse police actions, real or perceived, can cultivate distrust in communities who have been the object of that action. It doesn’t matter if the action happened here or abroad. For many, negative perceptions of police can be based on things that happened to others, not just to them” c. These new search and seizure polices assist the Cleveland Division of Police in becoming a model of policing in the United States d. With these new strategies we begin to build a foundation of trust within the neighborhoods we serve e. As a Division, we are continuing our commitment to develop policies rooted in constitutional law, without overlooking the guidance from members of the community we serve: <ul style="list-style-type: none"> i. Community members 	<p><i>PPT #16</i></p> <p><i>PPT #17</i></p>

- ii. Church leaders
 - iii. Business owners
 - iv. Political leaders
 - v. Police leaders
 - vi. Department of Justice
- f. These policies provide clarity and guidance on complex legal issues. Using the tools provided by these new policies we can work with our community partners to build trust

Initiate a Large Group Discussion:

Ask class-“Why is this training important?”
Solicit feedback from students, answer below

PPT #18

- g. Search and Seizure has more impacts than you may think
- i. It is the law
 - ii. Conduct searches and seizures fairly and respectfully consistent with the Division’s commitment to;
 - 1. Procedural justice
 - a. Treating people with dignity and respect
 - b. Giving individuals a chance to be heard during encounters
 - c. Making decisions fairly and based on facts, staying neutral
 - d. Conveying goodwill and trustworthiness through transparency
 - 2. Community and Problem Oriented Policing
 - a. Identify and solve problems in ways other than arrest
 - 3. Community values
 - a. Bias free policing
 - 4. All investigatory stops will be conducted in a manner that not only promotes the safety of police officers and the public but also conforms to the constitutions of the United States and State of Ohio
 - iii. Can have negative impacts
 - 1. Personally
 - a. Loss of employment
 - b. Suspension
 - c. Civil liability for the officer and the department
 - d. Criminal liability on the part of the

<p>officer</p> <ul style="list-style-type: none">2. Loss of public trust<ul style="list-style-type: none">a. We want to make deposits in community bank accountb. As taught in Bias-Freec. The way the public views the police as a whole3. Court cases being lost <p>h. CDP will conduct investigatory stops, searches and arrests fairly and respectfully as part of an effective overall crime prevention strategy that takes into account community values</p> <p>i. Officers may take into account the race, ethnicity, age, gender, or other demographic characteristics of an individual in establishing reasonable suspicion or probable cause only when the characteristics are part of an actual and credible description of a specific subject in an investigation that includes other identifying factors.</p> <div style="border: 1px solid black; padding: 10px; margin: 20px auto; width: 80%;"><p style="text-align: center;">Initiate a Large Group Discussion:</p><p>During this review of definitions the instructor will say the key word and definition. The instructor will then ask the class to give examples. This will provide critical thinking concepts to the students and an opportunity for interactive learning.</p></div> <p>VI. Definition review (<i>Brief synopsis of several definitions with examples in bold</i>)</p> <ul style="list-style-type: none">a. <u>Consensual encounters-</u><ul style="list-style-type: none">i. A voluntary encounter between the police and an individual with the intent of engaging in casual, and/or non-investigative conversation.<ul style="list-style-type: none">1. A brief conversation with a pedestrian2. Talking with a store owner about community related concerns	<p style="text-align: center;">PPT #19</p>
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<ul style="list-style-type: none"> ii. A reasonable person in the individual’s position would feel free to leave and/or decline any of the officer’s requests at any point <ul style="list-style-type: none"> 1. It is best practice to inform the person that they are free to go-creates a record on body camera b. <u>Non-custodial interviews-</u> <ul style="list-style-type: none"> i. A voluntary and consensual investigatory interview that an officer conducts with an individual ii. During which the individual is free to leave and/or decline any of the officer’s requests at any point <ul style="list-style-type: none"> 1. <i>Talking to a neighbor about recent break-ins in the area</i> 2. <i>Canvassing an area to search for witnesses of a recent crime</i> 3. <i>Be mindful however, a non-custodial interview may turn into a seizure we will discuss seizures further</i> c. <u>Seizure-</u>When an officer’s words or actions would make a reasonable person believe that he or she is not free to leave or terminate the encounter <ul style="list-style-type: none"> i. <i>Physical arrest of an individual</i> ii. <i>Traffic stop</i> iii. <i>Investigatory stop</i> iv. <i>Show of force or authority</i> v. <i>Using lights or sirens</i> vi. <i>Number of officers present</i> vii. <i>Blocking the individual’s vehicle or freedom to move</i> viii. <i>Physical contact with the individual</i> ix. <i>Whether the officers or tone of voice indicates that compliance with the officers request is required</i> x. <i>Display of a weapon</i> d. <u>Area of Immediate Control-</u> The physical area within reaching distance which the person might gain possession of a weapon, destructible evidence, or evidence <ul style="list-style-type: none"> i. <i>Within reaching distance of a arrested person (arm’s</i> 	<p><i>A physical arrest, traffic stop, investigatory stop and show of force are clearly examples of seizures</i></p> <p><i>It is important to note that v.-x. is an evaluation of the totality of circumstances, not a bright line rule</i></p>
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length)

e. Search –

- i. A search is either a physical intrusion into a constitutionally protected area (ex. a person, house, paper or effect)
- ii. for the purpose of gathering information or any conduct that violates a reasonable expectation of privacy by officers or civilians acting as an agent of law enforcement

- 1. Search incident to arrest*
- 2. Inventory search of a vehicle prior to a tow*

f. Probable cause-The facts and circumstances known to the officer that would lead a reasonable person to believe an individual has more likely than not committed or is committing a crime

- i. Physical evidence on scene*
- ii. Witness or victim statements*
- iii. An officer's observations*

g. Plain Feel Doctrine:

- i. An officer may seize an object while conducting a limited search during a permitted pat down/frisk

- 1. The handle of a firearm*
- 2. Knife*

- ii. If its nature as contraband is immediately apparent by feel, and without manipulation of any objects.

- 1. Observable or apparent*

h. Reasonable Suspicion:

- i. An objectively, justifiable suspicion that is based on specific and articulable facts or circumstances that justifies an officer stopping an individual that has committed, is committing, or is about to commit an offense.

- 1. A investigatory stop of an individual based on*

the description provided by a radio broadcast (i.e. a person matching the description of a domestic violence suspect seen in the area of the caller)

ii. Reasonable suspicion is more than a hunch but less than probable cause.

1. *Needs to be articulable facts based on observations or reliable sources of information*

2. *While on routine patrol you observe a person standing in front of convenience store known to sell alcohol. You have previously had complaints of individual's openly drinking alcohol at this location. This person appears to drink from a large glass container. When this person notices the police he or she quickly turns to walk away and attempts to keep the container from sight. You initiate a non-custodial interview by walking up to the person and begin a casual conversation to develop more information. As you are speaking with the person you notice the glass container is an open container of beer.*

iii. A police officer stopping an individual must be able to point to specific facts or articulable circumstances even though the level of suspicion need not arise to probable cause.

Initiate a Large Group Discussion:

Can an officer search or seize a subject based on an anonymous tip alone?

Have student support and/or justify their response

Answer –no

PPT #20

<p>VII. Anonymous Tips</p> <ul style="list-style-type: none"> a. Information from a person not known by police is not to be assumed trustworthy without additional details which point to criminal activity b. Officers must carefully develop reasonable suspicion in cases involving anonymous tips by corroborating information received with what the officer observes on scene. c. Officer’s observations while on scene, securing more complete information from an anonymous person and/or other circumstances that would tend to support the information received are all ways that officers can use to articulate reasonable suspicion allowing a Terry stop. <p>VIII. Data Collection forms</p> <ul style="list-style-type: none"> a. Explain to the class-Keep in your mind the need to clearly articulate reasonable suspicion and probable cause. This information along with other information will be input into data collection software b. The software is primarily drop down boxes but also has free text input. However it is encouraged to fill out the drop down boxes fully for data collection c. You will be asked to clearly articulate what initially led you to the encounters. Including the facts giving rise to reasonable suspicion and separate facts justifying any non-consensual search d. Similar to a CIT stat sheet only digital e. This an opportunity to explain what you did during an encounter and why <p>IX. Safety</p> <ul style="list-style-type: none"> a. Identify supervisor who is the safety officer b. Safety is everyone’s number one priority c. All instructors will store their weapons and be checked by a supervisor prior to enter training areas d. Anyone can stop training for safety reasons e. Anyone injured must report their injury to an instructor or supervisor immediately f. There is a first aid kit and AED available at both sites <ul style="list-style-type: none"> i. Police Academy <ul style="list-style-type: none"> 1. First aid kit <ul style="list-style-type: none"> a. Entrance of police academy 2. AED <ul style="list-style-type: none"> a. Entrance of police academy b. Gym next to vending machine 3. Trauma kits <ul style="list-style-type: none"> a. Entrance of police academy b. Gym office 	<p><i>PPT #21</i></p> <p><i>PPT #22</i></p>
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- g. NO LIVE WEAPONS will be used in training; all students will be issued inert training weapons.
 - i. Instructors' weapons shall be secured
 - 1. Outside of training and area
 - 2. Prior to training
 - 3. Supervisors will check instructors
 - ii. Signage shall be placed outside of training area
 - 1. Warning to "Stay out, training in progress"
 - iii. No one shall be allowed to enter training area with live weapons
 - iv. Training Section supervisors shall monitor training
 - v. If someone enters the training area with a weapon
 - 1. All training shall stop immediately
 - 2. Training shall not resume until area is cleared and free from live weapons
 - a. Student personal safety
 - b. Officer personal safety
 - vi. Drink fluids
 - vii. Sunscreen (if necessary)
 - viii. Clothing to keep warm

X. Breaking for lunch

- a. All groups will return to the main classroom
- b. You will be allowed to recover your weapon (if needed)
- c. Must be back on time
- d. Do not leave your weapon in the car
- e. Do not put weapons in box, wait for instructions
- f. After lunch return to classroom for safety brief (same as in the morning) and safety check. Continue with training

XI. Divided into groups

- a. Read name for Group 1
 - i. Then report to their training area
 - ii. They will be safety checked by instructors
- b. Read name for Group 2
 - i. Then report to their training area
 - ii. They will be safety checked by instructors
- c. Read name for Group 3
 - i. Then report to their training area
 - ii. They will be safety checked by instructors

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CLEVELAND POLICE ACADEMY

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CONCLUSION

- A. Summarize material
- B. Ask Questions

EXHIBIT B

**Citizen Contacts
Search and Seizure
Module #1
Cleveland Division of Police**



Course Date: July – December 2019

Current Revision Date: 07-27-19

Course Hours: 1 hour 40 minutes

Primary Audience: Cleveland Police officers

Module Goal: Through scenario based training, the student will make the decision how to address a citizen complaint during a consensual encounter.

REFERENCES

1. Cleveland Division of Police GPO Search and Seizure
2. Cleveland Division of Police GPO Investigatory stops
3. Cleveland Division of Police GPO Probable Cause / Warrantless Arrest
4. Cleveland Division of Police GPO Strip Searches & Body Cavity Searches
5. Cleveland Division of Police GPO Miranda Warning and Waiver

COURSE MATERIALS

TEACHING AIDS

_____ Erasable Board/Markers

_____ Easel/Notepads

_____ Lectern/Table

 X Other:

 X Student Handouts

Handout #1:

INSTRUCTIONAL TECHNIQUES

_____ Lecture

 X Group Discussion

 X Demonstration

 X Scenario-based Training

 X Individual Exercise

 X Hands-on Techniques

 X Problem Solving

LEARNING OBJECTIVES

- **At the end of this topic, the student will be able to:**
 1. Understand how to apply the five search & seizure GPOs
 2. Identify factors that can turn consensual encounters into a seizure/detention
 3. Understand the concept of conversational fact gathering
 4. Analyze if a seizure takes place, officers must stay within the guidelines of the policies and 4th amendment
 5. Decide whether the search and/or seizure met all department policies, procedures and training standards

<p>I. Scenario for Instructor and 911 call:</p> <p>A. This scenario will start with a two-person zone car responding to a radio broadcast for a male disturbing outside a corner store. A business owner is calling to report a male loitering on the sidewalk in front of his business and would like him removed. Caller states this is affecting his business but does not state how. The officers will be told they have arrived on scene and directed to role player #1 who is acting as the store owner. If officers ask any questions pertaining to the call, they will be advised that no further information is available. <i>(Note: description will match the role player’s outer clothing, height and weight for that day.)</i></p> <p>II. Instructions for Role Player #1</p> <p>A. Officers will then confer with the store owner, role player #1, who will state, <u>“that guy has been standing on the sidewalk outside my store for a half hour without coming in or buying anything.”</u></p> <p>B. Store owner, role player #1, states that he has asked them to leave the area several times. <u>“I told him if he’s not going to buy anything, he has to leave. I want him removed from the area.”</u></p> <p>C. The store owner will point out that he has a clearly posted sign saying, <u>“No Loitering”</u> in his parking lot.</p> <p>III. Instructions for Role Player #2</p> <p>A. Role player #2 will be standing on the “public sidewalk” waiting for his ride.</p> <p>B. Role player #2 will not be blocking the entrance to the business nor will he be blocking the sidewalk.</p> <p>C. Role player #2 will not argue with role player #1 or the officers</p> <p>D. Role player #2 will not engage the officers or role player #1 until addressed by the officers. If the officer do not engage role player #2, he will advise officers of his actions. (See RP #2 instructions)</p>	<p>Instructor will act as the dispatcher and provide this information</p> <p>This sheet can be used as a handout for the role player</p> <p>The address is 123 Main street</p> <p>Officers should allow the complaint to speak providing him a voice.</p>
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<p>E. Role player #2 Script (Male standing on sidewalk)</p> <ul style="list-style-type: none"> a. If the officers do not initiate an encounter, role player #2 will approach them and state, <u>“He has been yelling at me to either buy something or leave for the last 20 minutes”</u>. This will ensure interaction with role player #2. b. If the officers should approach role player #2 who will be standing there calmly but looking around. The role player will be cooperative with all questioning. c. Interaction with the police: be calm and cooperative, and follow any orders given, unless you are asked to leave or to give officers your ID. If you are ordered to leave, refuse and ask why. If officers ask you to produce identification, refuse to do so. d. Role player #2 will comply with officer’s commands and allow them to ask questions, before asking if he or she is detained. To end scenario, role player #2 will say, <u>“there’s my ride”</u>, and then they will walk away. e. If officers then stop him, a seizure has been made and needs to be justified, they should let role player #2 walk away. <ul style="list-style-type: none"> i. The proper response should be allowing role player #2 to walk away <p>F. Officer’s desired response when contacting role player #2</p> <ul style="list-style-type: none"> a. Initiate a non-custodial interview with the understanding no crime has occurred. b. This contact with role player #2 should remain conversational and any questions should be only to gather facts from the perspective of role player #1. c. Professionally explain to role player #2 why you have made contact with them <ul style="list-style-type: none"> ii. Advise the role player they are not being detained iii. Answer any questions from the role player 	<p><i>Consensual encounter should be built on a pillars of trust and respect</i></p> <p><i>Conversational interaction between the officers and role player</i></p> <p>Do not escalate the situation</p>
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<p>iv. Explain to role player what the store owner's complaint is and why police are involved</p> <p>d. Officers should/ can provide alternatives (i.e. asking if role player needs a ride or ask him whether he/she is willing to voluntarily move further away from the store to limit the interaction with the store owner)</p> <p>e. Officers should not order role player #2 to do anything</p> <p>IV. Debriefing Protocol:</p> <p>A. Officers should be reminded of what turns a non-custodial interview into a detention or arrest.</p> <p>A. Telling him the role player they are not free to leave</p> <p>B. Ordering the role player to do anything</p> <p>C. Show of force</p> <p>D. An officer may ask for ID, although this could lead to a detention</p> <p>i. Why did you feel it was necessary to ask for the role player's id?</p> <p>ii. Do you feel that was appropriate or may have escalated that situation?</p> <p>E. Using oscillating lights to gain attention of role player</p> <p>F. Physical contact with the individual</p> <p>G. Number of officers present</p> <p>H. Blocking individual's freedom to move</p> <p>I. language or tone that indicates compliance is required</p> <p>B. Officers will address complainant and role player #2 with professionalism as they investigate the complaint.</p> <p>C. It is imperative that officers are aware this is a fact gathering conversation (non-custodial interview) not a terry stop or detention</p>	<p><i>Investigatory Stops GPO Definitions and Section B2 a-j</i></p> <p><i>Investigatory Stops GPO Definitions Section</i></p>
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<p>D. The role player is free to leave at any time</p> <p>E. Officers should not pat down or search the subjects</p> <p>F. If the officers detained role player #2, they will be remediated with the policy</p> <p>G. After the conversation with role player #2, officers should explain to the store owner no crime is occurring and RP #2 is legally allowed to be there.</p> <p>V. Debrief scenario and answer all questions</p> <p style="padding-left: 40px;">A. Provide positive feedback to officers for proper actions during the scenario.</p> <p style="padding-left: 40px;">B. Ask, “What was your legal basis for the stop?”</p> <p style="padding-left: 80px;">i. There is not a legal basis for ANY form of detention, this is a non-custodial interview</p> <p style="padding-left: 40px;">C. Ask, “Was immediate police action required?”</p> <p style="padding-left: 80px;">i. No, assistance provided to all parties to keep the situation from escalating.</p> <p style="padding-left: 40px;">D. Ask, “What would turn this encounter into a detention?”</p> <p style="padding-left: 80px;">i. Numbers of officers present</p> <p style="padding-left: 80px;">ii. Blocking the individual’s vehicle or freedom to move</p> <p style="padding-left: 80px;">iii. Physical contact with the individual</p> <p style="padding-left: 80px;">iv. Whether the officer’s language or tone of voice indicated that compliance with the officer’s requests is required</p> <p style="padding-left: 80px;">v. Display of weapon</p> <p style="padding-left: 80px;">vi. Display of official police vehicle indicators such as signals of flashing, oscillating, or rotating lights</p>	<p>Allow the scenario to evolve, note teachable moments to explore during the debrief</p> <p>Once the proper de-escalation is use for the complaint, this should be a low stress interaction</p> <p>Investigatory Stops GPO I, B1</p>
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Instructor's debrief will include, that when individuals are treated properly and with respect, we will receive greater cooperation from citizens. This provides opportunities for interactions with community members in an official capacity which empowers them with a collective problem solving experience. Showing citizens examples of working with the police will provide better police service to the community.

Officers should be striving to work toward the four pillars of community engagement:

- *Neutrality*
- *Respect*
- *Trustworthiness*
- *Voice*

VI. Performance evaluations:

- A. Did officers properly identify themselves as Cleveland Police? If "No", why not?
- B. Did officers detain any of the role players? If "Yes," why?
- C. Did officers state the encounter is being recorded? If "No", why not?
- D. Did officers listen and answer questions from the either of the subject(s)? If "No", why not?
- E. Did officers act courteous and professionally to the subjects?
- F. Do officers make subjects aware they can leave at any time?
- G. Can the officers articulate the purpose for identifying this as a consensual encounter?
- H. Did officers follow department policies/directives?

VII. Handout scenario:

- A. The officers not currently involved in the scenario will be

Handout #1

*Strip searches and
body cavity searches
GPO*

given a written search and seizure scenario (Handout#1).

- B. They will read the scenario and answer the questions in the handout while they are waiting for their turn to perform in the live action scenario.
- C. A policy book containing the five new search and seizure policies will be made available to assist officers with completing the written scenario.

VIII. Handout discussion:

- A. A review and discussion of the type of scenario (Handout #1) will take place after all officers have completed the live action scenario
- B. The instructor will answer any questions and relate it to the GPOs in connection with the scenario
- C. The instructor will correct any issues officers may have had during the handout scenario

During handout discussion, the strip search GPO should be discussed and questions should be answered using the provided GPO training book.

Discuss the exigent circumstances extends to the misdemeanor arrest when the item is believed to be a handgun or dangerous ordinance.

Section III subsections A. and B.1.

Advise officers of the privacy issues that go along with performing a strip search and steps required to address them.

Discuss the importance of notifying a supervisor and the reporting procedure

CONCLUSION

- A. Summarize material
- B. Questions?
- C. Answers

HANDOUT#1 Scenario

Print Name and Badge # _____

Handout Scenario #1: You arrest a male on a contempt of court DUS traffic warrant and have verified it on Channel 9. While conducting a search, you feel a solid object in the upper inseam of his trousers that you believe is the handle of a handgun. The male is not speaking or answering questions and is now passively resisting.

1. What is the legal justification for the search?

2. Per the new GPO, what type of search is required? Why?

3. Can you retrieve what you believe is the handgun? Why or why not?

4. What notifications need to be made?

5. What is the reporting procedure?

HANDOUT #1A
Instructor Answers Key to Scenario

Print Name and Badge # _____

Handout Scenario #1: You arrest a male on a contempt of court DUS traffic warrant and have verified it on Channel 9. While conducting a search, you feel a solid object in the upper inseam of his trousers that you believe is the handle of a handgun. The male is not speaking or answering questions and is now passively resisting.

1. What is the legal justification for the search?
Search incident to arrest.
2. Per the new GPO, what type of search is required? Why?
Strip Search, due to the “rearrangement of the clothing directly coving the arrestee’s genitalia, buttocks, breasts, or undergarments.
3. Can you retrieve what you believe is the handgun? Why or Why not?
Yes, you can retrieve the handgun under the exigent circumstances clause. However a supervisor shall immediately respond to the holding facility or to the scene when an officer requests permission to conduct a strip search and if conducted, must be done under the conditions that provide privacy.
4. What notifications need to be made?
A supervisor must be advised and called to the scene.
5. What is the reporting procedure?
Officer must complete a Cleveland Division of Police Prisoner Search Report

EXHIBIT C

**Consent / Residential Search
Search and Seizure
Module #2
Cleveland Division of Police**



Course Date:	July 15 th 2019 – November 2019
Current Revision Date:	07-27-2019
Course Hours:	1 hour 40 minutes
Primary Audience:	Cleveland Police officers
Module Goal:	Through scenario based training, the student will make the decision if they are legally justified to enter private property, seize an individual and/or search a residence

REFERENCES

1. Cleveland Division of Police GPO Search and Seizure
2. Cleveland Division of Police GPO Investigatory Stops
3. Cleveland Division of Police GPO Probable Cause / Warrant Arrests
4. Cleveland Division of Police GPO Strip Searches & Body Cavity Searches
5. Cleveland Division of Police GPO Miranda Warning and Waiver

COURSE MATERIALS

TEACHING AIDS

Erasable Board/Markers Easel/Notepads

Lectern/Table

Other:

Student Handouts

Handout #1:

INSTRUCTIONAL TECHNIQUES

Lecture Group Discussion

Demonstration Scenario-based Training

Individual Exercise Hands-on Techniques

Problem Solving

LEARNING OBJECTIVES

At the end of this topic, the student will be able to:

- A. Understand how to apply the five search & seizure GPOs
- B. Identify factors that would legally justify encroaching on a property owners curtilage
- C. Identify factors that legally permit an investigatory stop and a probable cause arrest
- D. Ensure they have evaluated all factors and can clearly identify the level of governmental intrusion
- E. Clearly articulate what actions the officer took during the scenario and what led them to those actions

<p>IV. Instructor set-up and 911 call</p> <p>A. This scenario has a two officer z/c being dispatched to investigate the report of a male, in his backyard, shooting a firearm into the air. When you arrive you will speak to Role Player #2 who will be acting as the 911 caller</p> <p>Scenario and Role player Script:</p> <p>A. Role Player #2 will advise, “My Neighbor has been in his backyard all day drinking alcohol, and shooting his gun into the air.” Role Player #2 also states that the “neighbor is always walking around his property with a gun on his hip”. The Role Player will tell the officers the description of the suspect. (Description given will match that of the role player for that days training). If asked any other questions by the officers the answer will be “I don’t know.”</p> <p>B. Officers will then see the described suspect male or female (Role Player #1) Standing by his front door with a firearm holstered on his or her hip. Role player #1 will have a bottle of alcoholic beverage (half full) in his hands.</p> <p>C. When Role Player #1 sees the officers, he or she will go inside the front door and secure the firearm. He or she will then walk back outside and stand by the front door/stoop. The holster should be empty and still on the hip. As the officers approach Role Player #1 he or she will state “You are not permitted on my property.”</p> <p>D. As officers engage Role Player #1, he or she will state to them that he has “been drinking, cleaning his pistol, and listening to the game on the radio in his backyard.” The Role player will then state “I fired a couple of rounds into the air to celebrate the championship game, just like everyone else was doing”.</p> <p>V. Role player instructions, If/When:</p> <p>A. If the Role player is asked by the officers to enter the house he or she will state” NO, I do not permit you to enter my house and that I have done nothing wrong.”</p>	<p>USE THIS AS A HANDOUT TO THE ROLE PLAYER</p> <p>ALLOW THE SCENARIO TO EVOVLE, NOTE TEACHABLE MOMENTS TO EXPLORE DURING THE DE-BREIF</p> <p>POINT IN THE DIRECTION OF ROLE PLAYER #1</p> <p>KEEP YOUR HANDS VISIBLE</p> <p>HOLSTER SHOULD BE CLEARLY VISIBLE</p> <p>WHEN ASKED ABOUT THE FIREARM, TELL THE OFFICER YOU PUT IT INSIDE THE HOUSE</p>
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CLEVELAND POLICE ACADEMY

- B. If not asked by officers to enter property, role player will ask if he is “being detained or if he or she is free to go inside.”
- C. Role player will answer questions, but will state he or she “knows the law and is allowed to have a firearm on his property and can exercise his or her right to open carry.”
- D. Role player will advise officers that he is “home alone, having a few drinks while and listening to the game on the radio in the backyard.” The role player will have slurred speech and appear to be unsteady on their feet.
- E. Role player will advise that he celebrated the victory “as everyone else did around the neighborhood”.
- F. He will then state that officers are not allowed to search him, his property, nor are they allowed to enter his residence.
- G. Role player will advise officers that he is the only one home.

Due to the fact the crime involves a firearm; a pat down of the subject is justified.
When denied access to the residence, officers must stop and obtain a warrant before entering the subject’s apartment.
The correct CCO is 627.04 Using weapons while intoxicated
Per Divisional Notice 16-337, officers shall not arrest for CCO 627.12.

YOU FIRED THE ROUNDS STRAIGHT UP IN THE AIR

***CLEVELAND
CODIFIED
ORDNANCE 627.04

DIVISIONAL NOTICE
16-337***

VI. Scenario Objectives:

- A. Officers will properly identify themselves as the “Cleveland Police” and that bodycam is recording, when safe to do so.
- B. Officers will address complainant and suspect with professionalism as they investigate the complaint.
- C. Officers will assess the legal grounds for and describe the level of citizen/police interaction.

<p>D. Officers should approach and detain the suspect and the secure surrounding area.</p> <p>E. Officers will advise the suspect of his Miranda warnings.</p> <p>F. Pat down of suspect should occur</p> <p>G. Officers will not see the gun in the residence and ask for permission to enter to secure the firearm.</p> <p>VII. Debrief</p> <p>A. Provide positive feedback to officers for proper actions taken during the scenario.</p> <p>B. Cover any missteps, problems, or issues occurring during the scenario.</p> <p>C. Answer and clarify all question connection with the scenario or related GPOs.</p> <p>VIII. Scenario Specific Questions</p> <p>A. What was your legal basis for the contact?</p> <p>i. Received a radio assignment</p> <p>ii. Investigative stop in connection with a male or female matching the description of an individual firing a gun into the air</p> <div data-bbox="266 1373 1024 1801" style="border: 1px solid black; padding: 10px;"><p><i>C.C.O. 627.04 Using Weapons While Intoxicated:</i></p><p>a) <i>No person, while under the influence of alcohol or any drug of abuse, shall carry or use any firearm or dangerous ordnance.</i></p><p>b) <i>Whoever violates this section is guilty of using weapons while intoxicated, a misdemeanor of the first degree.</i></p><p>(RC 2923.15; Ord. No. 931-14. Passed 4-20-15, eff.4-21-15)</p></div>	<p>Instructors note the reason for entering the person's curtilage is officers have reasonable belief that a crime has occurred and there is an exigency issue. Officers do not know if the suspect is a danger to himself or others</p> <p>Furthermore if there was no exigency or no observable crime and an individual is refusing to allow officers on their curtilage, the preferred method is obtaining a search warrant</p> <p><i>ASK EVERY TEAM OF OFFICERS</i></p> <p><i>DO NOT ALLOW ONE OFFICER TO ANSWER ALL THE QUESTIONS IT MUST BE SPLIT UP TO INCREASE PARTICIPATION</i></p>
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<p>iii. After it is determined the role player is under the influence of alcohol a physical arrest can occur</p> <p>iv. A search warrant is needed to enter the residence to retrieve the firearm</p> <p>B. Did you state the stop is being recorded?</p> <p>i. Yes or no? Why or Why not?</p> <p>C. At what point did you issue Miranda Warnings? Why?</p> <p>i. The Miranda warning is required by <i>Miranda v Arizona</i>, 384 U.S. 436 (1966), and applies only to sworn police officers who will be questioning or interrogating a subject who is in custody</p> <p>1. Officers shall provide the Miranda warning when both of the following criteria are met:</p> <p>a. The subject is in custody and</p> <p>b. The officer is to question or interrogate the individual about any crime</p> <p>D. If you made a physical arrest and the suspect was wearing a religious article of clothing, how would you handle that during the search incident to arrest?</p> <p>i. Respectfully, and, if known and possible, in accordance with the person's religious beliefs. Such objects shall be returned upon the conclusion of the encounter</p> <p>E. Without using canned or boilerplate language, articulate the facts and circumstances which lead you to your arrest decision.</p> <p>F. Can you enter the house to retrieve the firearm?</p> <p>i. No, a search warrant is needed</p>	<p>MIRANDA WARNING AND WAIVER GPO (I,A)</p> <p>MIRANDA WARNING GPO (III,B,2)</p> <p>SEARCH AND SEIZURE GPO (VI, A,I,a)</p> <p>SEARCH AND SEIZURE PAGE 1</p> <p>SEARCH AND SEIZURE GPO (III, A,B,C,D)</p>
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<p>G. What parts of the suspect's home is considered the curtilage?</p> <ul style="list-style-type: none">i. Any land or building immediately adjacent to a dwelling that is directly connected to it or in close proximity <p>H. If you attempted to gain a consent search did you;</p> <ul style="list-style-type: none">i. Inform the person, in an age appropriate manner, of his or her right to refuse and to revoke consent at any timeii. Document the consent on your WCSiii. Ensure that an individual is consenting to the search is voluntaryiv. Physically or mentally coerce, threaten or exploit an individual in order to gain consent for a searchv. Establish if the person can give consent <p>I. Did you make a physical arrest? Why or why not?</p> <ul style="list-style-type: none">i. Allow the officers to articulate the justificationii. If an arrest was made explain to the officers additional steps that could be taken<ul style="list-style-type: none">1. When taking a subject into custody, as early as practical under the circumstances, officers shall identify themselves, inform the subject that he/she is under arrest, and state the reason for the arrest.2. Standardized Field Sobriety Tests3. Breathalyzer	<p>Instructors should reference Search and Seizure GPO (III, E, 1-4)</p> <p>***NOTE***</p> <p>THIS IS UNRELATED TO A TRAFFIC OFFENSE; IT IS THE BASIC INTOXICIFICATION STANDARD. NO ALS, NO 2255</p>
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<p>IX. P</p>	<p><u>Discuss how coercion could occur during this scenario. Officers cannot threaten an individual with the charge of a crime or threat to obtain a warrant to gain compliance to search or enter residence.</u></p> <p><u>Explain to the officers during search of the individual, if the gender is not known to the officers, they shall respectfully request the person’s gender. Appropriate steps will then be taken to pat down/search within the GPO guidelines.</u></p> <p>formance evaluations:</p> <ol style="list-style-type: none"> a. Did officers properly identify themselves as Cleveland Police? If “No”, why not? b. Did officers identify the age of the suspect? c. Do officers state the reason for the search/seizure? d. Did officers state how the search/seizure will be conducted? e. Did officer state the stop is being recorded? f. Is the pat down limited to outer clothing where a weapon could be concealed? g. Is the protective sweep conducted only in the area immediately adjacent to the subject? h. Did officer advise the subject of his Miranda warnings at the appropriate time and receive a verbal affirmation? i. If asking for a consent search, does the officer inform the person of their right to refuse and revoke consent at any time? j. Are searches completed with due regard and respect for private property interests? k. Can officers articulate the reasonable suspicion for the investigatory stop/pat down? l. Can officers articulate PC for arrest if applicable base on 	<p><i>Providing as much information as possible to the subject will increase the possibility for voluntary compliance.</i></p> <p><i>This also increases the re-enforces the community engagement pillars of; <u>Neutrality, Respect, Trustworthiness, Voice</u></i></p>
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<p>their own observations</p> <ul style="list-style-type: none">i. Reason for the stopii. whether the individual was asked consent to searchiii. whether a pat down, frisk or other non-consensual search was performed on any individual or vehicle <p>m. Did the officers act with courtesy and professionalism to the subject?</p> <p>n. Did the officers follow all other departmental directives from the Search and Seizure GPOs?</p> <p>X. Handout scenario:</p> <ul style="list-style-type: none">A. The officers not currently involved in the scenario will be given a written search and seizure scenario (Handout#1).B. They will read the scenario and answer the questions in the handout while they waiting their turn to perform in the live action scenario.C. The five new policies will be made available to assist officers with completing the written scenario. <div style="border: 1px solid black; padding: 10px; margin: 10px 0;"><p>Training section will provide a training book copy of the five GPOs making up the new search and seizure policy.</p><p>These books will be provided for reference to the officers in scenario, as well as for the officer in the handout scenarios.</p><p>Questions not found or answered will be looked up and addressed through this reference.</p></div> <p>XI. Handout Discussion:</p>	<p>Handout #1</p> <p>Officers will state specific actions that cause the decision to stop or not</p> <p>Instructor will complete the performance evaluation form for each student</p>
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<ul style="list-style-type: none">A. The instructor will open a discussion with the students on how they would have handled the scenario in Handout #1B. The instructor will answer any questions on how to handle the handout scenarioC. The instructor will correct any issues officers may have had during the handout scenarioD. Instructor will answer any question.	
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CONCLUSION

- A. Summarize material
- B. Answer question from the class

HANDOUT #1 Scenario

Print Name and Badge # _____

Handout Scenario #1: While assigned to a two officer zone car, you receive a radio assignment for a theft report. Upon arrival at 3554 East 32nd St., you identify Mr. Smith as the complainant. Mr. Smith states last night he was cutting his grass after returning home from work. After he was finished, he left his lawn mower in his backyard so the engine could cool before putting it away. His neighbor approached him and stated, “I’m sick of you cutting the grass so late in the day.” Mr. Smith stated he gets home from work late and it is the only time that he has to do yard work. Mr. Smith then went inside to eat returning about an hour later to find his lawnmower missing.

Mr. Smith stated he went over to his neighbor’s house to ask about the missing mower. Mr. Smith believes when he looked into the neighbor’s garage, he saw his mower.

You and your partner walk over to the neighbor’s house. As you are approaching the front door, you notice the neighbor’s garage is open and you see several pieces of lawn equipment. However, you cannot determine if Mr. Smith’s lawn mower is there.

You knock on the door and speak with Mr. Brown who is the owner of the house. He confirms the conversation between himself and Mr. Smith. He stated he did not steal any lawn mower and will not give you permission to check the garage.

1. Can you enter the garage and confirm the stolen property is inside? Explain.

2. May you tell Mr. Smith that you will obtain a search warrant to gain voluntary consent to search the garage? Explain.

3. Does this fall under the Plain View Doctrine? Why or why not?

4. Mr. Brown’s wife comes out and gives you permission to go inside the garage after Mr. Brown denies you access. Can you accept the permission? Why or Why not?

HANDOUT #1A

Instructor Answers Key to Scenario

Handout Scenario #1: While assigned to a two officer zone car, you receive a radio assignment for a theft report. Upon arrival at 3554 East 32nd St., you identify Mr. Smith as the complainant. Mr. Smith states last night he was cutting his grass after returning home from work. After he was finished, he left his lawn mower in his backyard so the engine could cool before putting it away. His neighbor approached him and stated, “I’m sick of you cutting the grass so late in the day.” Mr. Smith stated he gets home from work late and it is the only time that he has to do yard work. Mr. Smith then went inside to eat returning about an hour later to find his lawnmower missing.

Mr. Smith stated he went over to his neighbor’s house to ask about the missing mower. Mr. Smith believes when he looked into the neighbor’s garage, he saw his mower.

You and your partner walk over to the neighbor’s house. As you are approaching the front door, you notice the neighbor’s garage is open and you see several pieces of lawn equipment. However, you cannot determine if Mr. Smith’s lawn mower is there.

You knock on the door and speak with Mr. Brown who is the owner of the house. He confirms the conversation between himself and Mr. Smith. He stated he did not steal any lawn mower and will not give you permission to check the garage.

1. Can you enter the garage and confirm the stolen property is inside? Explain?

No. You cannot enter the garage without consent from the home owner.

2. May you tell Mr. Smith that you will obtain a warrant to gain voluntary consent to search the garage? Explain.

No. You are not allowed to threaten or use coercion to gain consent to search.

3. Does this fall under the Plain View Doctrine? Why or why not?

No. The lawn mower is not clearly recognizable.

4. Mr. Brown’s wife comes out and gives you permission to go inside the garage after Mr. Brown denies you access. Can you accept the permission?

No. Once you have been denied consent from the home owner, it can only be revoked by that individual.

EXHIBIT D

**Warrantless Arrest
Search and Seizure
Module #3
Cleveland Division of Police**



Course Date: July – December 2019

Current Revision Date: 07-22-2019

Course Hours: 1 hour 40 minutes

Primary Audience: Cleveland Police officers

Module Goal: Through scenario based training, the student will make the decision if it is legally justified to seize an individual and conduct a pat down or search of persons or places within the scenario

REFERENCES

1. Cleveland Division of Police GPO Search and Seizure
2. Cleveland Division of Police GPO Investigatory stops
3. Cleveland Division of Police GPO Probable Cause / Warrantless Arrest
4. Cleveland Division of Police GPO Strip Searches & Body Cavity Searches
5. Cleveland Division of Police GPO Miranda Warning and Waiver

COURSE MATERIALS

TEACHING AIDS

_____ Erasable Board/Markers

_____ Easel/Notepads

_____ Lectern/Table

 X Other:

 X Student Handouts

Handout #1:

INSTRUCTIONAL TECHNIQUES

_____ Lecture

 X Group Discussion

 X Demonstration

 X Scenario-based Training

 X Individual Exercise

 X Hands-on Techniques

 X Problem Solving

LEARNING OBJECTIVES

At the end of this topic, the student will be able to:

1. Understand how to apply the five search & seizure GPOs
2. Articulate reasonable suspicion for an Investigatory Stop
3. Identify factors that raise the encounter from reasonable suspicion to probable cause for arrest
4. Understand the difference in scope between pat down/frisk and search incident to arrest
5. Ensure officers have evaluated all factors and can clearly identify the level of governmental intrusion allowed

LESSON PLAN

<ul style="list-style-type: none"> I. Introduction <ul style="list-style-type: none"> a. Instructor introduction b. Course Goal II. Learning Objectives <ul style="list-style-type: none"> a. Understand how to apply the five search & seizure GPOs b. Articulate reasonable suspicion for an Investigatory Stop c. Identify factors that raise the encounter from reasonable suspicion to probable cause for arrest d. Understand the difference in scope between pat down/frisk and search incident to arrest e. Ensure officers have evaluated all factors and can clearly identify the level of governmental intrusion allowed III. Officer Safety Protocol <ul style="list-style-type: none"> a. All instructors will confirm that no live weapons are in the room b. Confirm all scenario training weapons are inert c. Mandate all students do a visual/manual check to confirm they have no weapons, Taser cartridges, magazines etc. d. Inform all students <ul style="list-style-type: none"> i. Touching of the role players will be limited to the requirements of the scenarios ii. If the instructor gives the command “STOP TRAINING” the scenario stops immediately 	<p style="margin-top: 0;">INTRO</p> <p style="margin-top: 20px;">REVIEW ASSESSMENT SHEET</p> <p style="margin-top: 20px;">SAFETY CHECK</p>
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CLEVELAND POLICE ACADEMY

<p>IV. The Scenario and Role Player Script</p> <p>a. In this scenario, a two person car will be patrolling the zone assigned to them for the shift. While driving the officers get flagged by a frantic individual who state they were just robbed by a person with a gun. The victim reports the suspect stole a watch from them and walked eastbound to the next street. The victim provides you with a suspect description (the description will be the clothing that the role player is wearing that day). This incident occurred about 30 seconds prior to your arrival. After confirming EMS is not needed, you drive the zone car eastbound to the next street to find a person walking eastbound matching the exact description that the victim gave you. 60 seconds total has passed. You get out and approach:</p>	<p>USE AS HANDOUT TO ROLE PLAYERS TO ENSURE CONSISTENCY THROUGHOUT THE TRAINING</p>
<p>V. Instructions for Role Player #1</p> <p>a. RP #1 will act suspicious by looking nervous, not making eye contact and walking in different directions (evasive)</p> <p>b. Interaction with Police- Cooperate with officers as the officers ask questions, Role Player #1 will answer them but will appear anxious. If asked about a robbery Role Player #1 will state they don't know anything about anyone being robbed. Refuse to answer any other questions. Role Player #1 will have a BLUE GUN concealed in his sock under his pant leg. He or she will have a wrist watch in a side pocket.</p>	<p><i>Allow the scenario to evolve, make note of teachable moments and address these in the debrief</i></p> <p>INVESTIGATORY STOPS GPO (II, C)</p>
<p>VI. Officers desired response when contacting suspect</p> <p>a. The officer's full name and badge number</p> <p>b. The fact that the officer is a Cleveland Police Officer</p> <p>c. The reason for the stop</p> <p>d. The fact the stop is being recorded, if applicable</p> <p>e. Officers will address the suspect with professionalism as they investigate</p>	<p>INVESTIGATORY STOPS GPO (II, A)</p> <p>SEARCH AND SEIZURE GPO (V,B,1)</p>

<p>f. Identify the level of detention</p> <ul style="list-style-type: none">i. Investigative stop, when the officer determines probable cause to arrest, a physical arrest will occur <p>g. Identify what the officers can legally do within the confines of the stop</p> <ul style="list-style-type: none">i. When officers have reasonable suspicion for the investigatory stop<ul style="list-style-type: none">1. Pat down of outer garments for weapons2. Seize firearm in connection with evidenceii. When officers have probable cause to arrest<ul style="list-style-type: none">1. Search incident to arrest2. Question after Miranda has been issued3. Handcuff4. Place in rear of zone car5. Identify when it is appropriate to issue Miranda Warnings<ul style="list-style-type: none">a. Subject is in custodyb. Officer is to question or interrogate individual about ANY crime <p>h. Once the decision to arrest has been officially made by the officers the scenario will conclude</p> <p>VII. Debrief of Training</p> <ul style="list-style-type: none">a. Review of module goalb. Review of key points of learning objectivesc. Solicit student feedback	<p><i>MIRANDA WARNINGS GPO (I,B)</i></p> <p><i>ASK EACH OFFICER TEAM QUESTIONS</i></p>
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<p>VIII. Scenario Specific Questions</p> <p>a. What was your legal basis for the contact?</p> <p>i. Investigative stop in connection with a report of an aggravated robbery</p> <ol style="list-style-type: none"> 1. A victim stated he/she was just robbed by a person with gun 2. Suspect walked eastbound 3. You find individual matching the same description the victim gave you eastbound from the location you were just at 4. Time proximity (60 seconds total has passed <p>ii. Physical arrest after probable cause was determined</p> <p>b. Did you state the stop was being recorded?</p> <p>i. Yes or no? Why not?</p> <p>c. At what point did you issue Miranda warnings? Why?</p> <p>i. The Miranda warning is required by Miranda v. Arizona, 384 U.S. 436 (1966), and applies only to sworn police officers who will be questioning or interrogating a subject who is in custody</p> <p>ii. Officers shall provide Miranda Warning when both of the following criteria are met</p> <ol style="list-style-type: none"> 1. The subject is in custody 2. The officer is to question or interrogate the individual about any crime <p>d. What was your reasonable suspicion for stopping the role player?</p> <p>i. Officers shall not rely solely upon an individual geographic location, or presence in a high crime</p>	<p><i>INVESTIGATORY STOPS GPO (II, A)</i></p> <p><i>INVESTIGATORY STOPS GPO (III,B)</i></p> <p><i>GPO MIRANDA WARNING AND WAIVER (I, A)</i></p>
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<p>attorney, parent, or guardian is present; however no parent or guardian may waive the juvenile's right to counsel</p> <p>h. Did you attempt to use coercion during the course of the encounter, examples are</p> <ul style="list-style-type: none">i. Threatening to charge a person with crime such as obstruction or disorderly conductii. Threatening a referral to department of children and family servicesiii. Threatening to obtain a warrant as means of obtaining consentiv. Threatening the use of a K-9 <p>i. What if anything would you do differently?</p> <ul style="list-style-type: none">i. Solicit student feedback <p>j. What is the difference between a pat down search and search incident to arrest</p> <ul style="list-style-type: none">i. <u>Pat down/frisk</u>-a limited search during an investigatory stop in which an officer conducts a pat down of the outer clothing of a person for weapons when the officer reasonable suspects that the particular person is armed and dangerous. It is limited to what is necessary to detect weapons and must be based reasonable articulable suspicion that the person is armed. An officer may not manipulate objects that are discovered under the clothing to determine whether they are contraband	<p>ADDRESS ANY DEFECNCIES</p> <p>SCENARIO COMPLETE, PREPARE FOR NEXT SCENARIO</p>
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Instructor will ask officers to articulate an example narrative for their reasonable suspicion that this person is the suspect in the crime. The narrative should focus on information provided by the victim, such as, physical description, clothing, location in relation to the area crime was committed, and a detailed account of the subjects behavior.

***THIS IS THE
ASSESSMENT
SHEET***

- ii. Search incident to arrest- A search of an arrested person, their personal effects, or their area of immediate control at the time of search
- iii. Custodial searches shall be conducted respectfully and, when possible, be conducted by officers of the same/gender identity as the arrestee

***Discussion point for this scenario is how does the search of the suspect and the discovery of the blue gun relate to the strip search GPO.
Instructor: This does not fall under the strip search GPO.***

IX. Performance evaluations:

- A. Did officers properly identify themselves as Cleveland Police? If “No” why not?
- B. Did officers state the reason for the search/seizure?
- C. Do officers state how the search will be conducted?
- D. Did officers state the stop is being recorded?
- E. Do officers limit the pat down to outer clothing where a weapon could be concealed?

- F. Did officers advise the suspect of his Miranda warnings and receive a verbal affirmation?
- G. Was the arrest limited to a reasonable time frame?
- H. Did officers act with professionalism during stop?

***Acting with professionalism by providing very clear, calm, and precise commands will increase the likelihood of voluntary compliance from the suspect.
Advising and keeping the subject informed of the reasons for the stop also increases the likelihood of voluntary compliance.***

- I. Do officers articulate their reasonable suspicion for the stop?
- J. Do officers articulate their probable cause to arrest?

Officers should be aware of the behavioral responses people, especially youths, may employ that can impact the tenor and evolution of an investigatory stop in unintended ways. Responses may include

- 1. Physical resistance including fleeing***
- 2. Verbal challenges***
- 3. Outright disregard for police directives***
- 4. Resignation to perceived mistreatment***

- X. Handout scenario:
 - A. The officers not in the scenario will be given a handout describing a search and seizure scenario that they will work on while officers are engaged in the live action scenarios.

Handout #1

Officers will state specific actions that cause the decision to stop or not

Instructor will complete the performance evaluation form for each student

Training Section will provide a training book which will contain copies of the five GPOs making up the new search and seizure policy.

These books will be provided for reference to the officers in scenario, as well as for the officers in the handout scenarios.

Questions not found or answered will be looked up and addressed through this reference.

XI. Handout Discussion:

- A. The instructor will open a discussion with the students on how they would have handled the scenario in Handout #1
- B. The instructor will answer any questions on how to handle the handout scenario
- C. The instructor will correct any issues officers may have had during the handout scenario

During handout discussion, address issues with questioning juveniles. Discuss the need to make sure the juvenile is provided Miranda right in an age appropriate way and then that they acknowledge understanding of the Miranda rights officer has provided.

Can also take time during discussion to review the above listed issues with dealing with juveniles.

CONCLUSION

- A. Summarize material
- B. Questions?
- C. Answers

HANDOUT #1 Scenario

Print Name and Badge # _____

Handout Scenario #1: You are assigned to a two person zone car. During your tour of duty you receive a radio assignment at 761 St. Clair for a male stabbed. As you arrive, a male, “John” with blood on his pants walks up and begins to tell you where the stabbed male is lying. While leading you to the area, John begins to describe how he found the male and at the end of the statement says, “I warned him, I told him this was going to happen if he kept messing with me.” Your back up arrives, they secure the scene and start applying first aid to the injured male who is not responding. EMS has been notified and is five minutes away.

1. What are the two main criteria for issuing Miranda warnings?

a. _____

b. _____

2. Do you need Miranda warnings to clarify his statement? Why or why not?

3. If you determine that you will issue Miranda warnings to the subject and a detective arrives on scene later, does the detective need to reissue Miranda warnings before questioning? Why or why not?

4. What are the proper considerations to be taken if you know that “John” is a juvenile?

HANDOUT #1A
Instructor Answers Key to Scenario

Print Name and Badge # _____

Handout Scenario #1: You are assigned to a two person zone car. During your tour of duty you receive a radio assignment at 761 St. Clair for a male stabbed. As you arrive, a male “John” with blood on his pants walks up and begins to tell you where the stabbed male is laying. While leading you to the area, the male begins to describe how he found the male and at the end of the statement says, “I warned him, I told him this was going to happen if he kept messing with me.” Your back up arrives, they secure the scene and start applying first aid to the injured male who is not responding. EMS has been notified and is five minutes away.

1. What are the two main criteria for issuing Miranda warnings?
 - a. *The subject is in custody*
 - b. *Officer is to question or interrogate the individual about any crime*

2. Do you need Miranda warnings to clarify his statement? Why or why not?
Yes. If the subject makes a spontaneous incriminating statement you must provide Miranda warning before clarifying the statement.

3. If you determine that you will issue Miranda warnings to the male and a detective arrives on scene later, does the detective need to reissue Miranda warning before questioning?
Yes. If there is a significant delay (more than 30 min.) between the times Miranda warning is first given.

4. What are the proper considerations to be taken if you know that “John” is a juvenile?
 - c. *Officer shall explain the Miranda warnings in an age-appropriate manner.*
 - d. *Ask juvenile to explain them back in their own words.*
 - e. *Officer shall stop questioning juvenile upon the request of a parent, attorney, or guardian*