

**CITY OF LONG BEACH
CITIZEN POLICE COMPLAINT
COMMISSION AGENDA**

**THURSDAY, DECEMBER 12, 2019
411 W. OCEAN BOULEVARD
CIVIC CHAMBERS, 5:30 PM**

Desmond Fletcher, Chair
Christian Cooper, Vice Chair
James Ahumada, Commissioner
Leonard Adams Jr., Commissioner
Dana Buchanan, Commissioner
Veronica Garcia, Commissioner



Porter Gilberg, Commissioner
Dianne McNinch, Commissioner
Justin Morgan, Commissioner
Maria Norvell, Commissioner
Joni Ricks-Oddie, Commissioner

Patrick Weithers, Manager of the CPCC

CALL TO ORDER

ROLL CALL

CONSENT CALENDAR

1. 19-078CP Recommendation to receive, file and close the following cases due to lack of evidence and/or witness cooperation or staff recommendation:

<u>CPCC NO.</u>	<u>ALLEGATION(S)</u>
18-077	Improper Entry & Bias Based Policing
18-154	Improper Arrest, Unbecoming Conduct & Misappropriation of Property
18-155	Unbecoming Conduct
18-161	Use of Force, Dishonest & Unbecoming Conduct
18-178	Profanity
18-203	Failure to Take Report & Unbecoming Conduct
19-007	Unbecoming Conduct, Failure to Investigate & Failure to Take Action
19-010	Use of Force
19-013	Unbecoming Conduct
19-014	Unbecoming Conduct & Failure to Take Report
19-017	Unbecoming Conduct
19-018	Unbecoming Conduct
19-019	Unbecoming Conduct
19-030	Unbecoming Conduct & Intimidation

Suggested Action: Approve recommendation.

REGULAR AGENDA

2. 19-079CP Recommendation to approve the minutes of the Citizen Police Complaint Commission Regular Meeting of Thursday, November 14, 2019.

Suggested Action: Approve recommendation.

3. 19-080CP Recommendation to receive and file update on Commissioners questions or recommendations.

Suggested Action: Approve recommendation.

4. 19-081CP Recommendation to receive and file presentation on City Manager's Findings.

Suggested Action: Approve recommendation.

PUBLIC COMMENT: OBTAIN SPEAKER CARD FROM THE CITY CLERK

Opportunity to address the Commission (on non-agenda items) is given to the first 10 persons who submit Speaker Cards to the City Clerk prior to 5:30 p.m. Each speaker is allowed three (3) minutes to make their comments unless that time is extended by the Chair.

MANAGER'S REPORT

REMARKS FROM THE CHAIR AND COMMISSIONERS

RECESS TO CLOSED SESSION

Recess to Closed Session in the Council Lounge, pursuant to Section 54957 of the California Government Code, for the purpose of consideration of personnel discipline matters.

RECONVENE FROM CLOSED SESSION

5. 19-082CP Recommendation to receive Commission's vote and refer findings to the City Manager.

Suggested Action: Approve recommendation.

PUBLIC COMMENT

Opportunity is given to those members of the public who have not addressed the Commission on non-agenda items. Each speaker is limited to three (3) minutes unless extended by the Chair.

ADJOURNMENT

I, Kyle Smith, City Clerk Specialist, certify that the agenda was posted not less than 72 hours prior to the meeting.

Note: The Citizen Police Complaint Commission agenda, supporting documents and a video recording of the meeting are available on the Internet at longbeach.legistar.com. Agenda items may also be reviewed in the Office of the City Clerk. Persons interested in obtaining an agenda via-email should subscribe to the City of Long Beach LinkLB System at www.longbeach.gov/linklb.

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NOTE:

If oral language interpretation for non-English speaking persons is desired or if a special accommodation is desired pursuant to the Americans with Disabilities Act, please make your request by phone to the Office of the City Clerk at (562) 570-6101, 24 business hours prior to the Charter Commission meeting.

Kung nais ang interpretasyon ng sinasalitang wika para sa mga taong hindi nagsasalita ng Ingles o kung nais ang isang natatanging tulong ayon sa Americans with Disabilities Act, mangyaring isagawa ang iyong hiling sa pamamagitan ng telepono sa Opisina ng Clerk ng Lungsod sa (562) 570-6101, 24 oras ng negosyo bago ang pagpupulong ng Charter Commission.

Si desea interpretación oral en otro idioma para personas que no hablan inglés o si desea una adaptación especial en conformidad con la Ley de Estadounidenses con Discapacidades, haga su solicitud por teléfono a la Oficina de la Secretaría Municipal al (562) 570-6101, 24 horas hábiles antes de la reunión de la comisión de estatutos.

បើមានការចង់បានឲ្យមានការបកប្រែភាសាផ្ទាល់មាត់ឲ្យអ្នកមិនចេះនិយាយអង់គ្លេស ឬបើមានការចង់បានឲ្យមានដំណោះស្រាយពិសេសដោយយោងតាមមាត្រាច្បាប់ស្តីពី ជនពិការអាមេរិកាំង សូមមេត្តាធ្វើសំណើអ្នកតាមទូរស័ព្ទដោយហៅទៅការិយាល័យស្មៀន ក្រុងតាមរយៈលេខ (562) 570-6101 (24 ម៉ោងធ្វើការមុននឹងចាប់ផ្តើមបើកកិច្ចប្រជុំ គណកម្មការធម្មនុញ្ញ)។

If written language translation of the Commission agenda and minutes for non-English speaking persons is desired, please make your request by phone to the Office of the City Clerk at (562) 570-6101, 72 business hours prior to the Commission meeting.

Kung nais ang pagsasalin ng nakasulat na wika ng agenda ng Komisyon at ang minutes para sa mga taong hindi nagsasalita ng Ingles, mangyaring isagawa ang iyong hiling sa pamamagitan ng telepono sa Opisina ng Clerk ng Lungsod sa (562) 570-6101, 72 oras ng negosyo bago ang pagpupulong ng Commission.

Si desea obtener la traducción escrita en otro idioma de la agenda y actas de la comisión para personas que no hablan inglés, haga su solicitud por teléfono a la Oficina de la

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**CITY OF LONG BEACH
CITIZEN POLICE COMPLAINT
COMMISSION MINUTES**

**THURSDAY, NOVEMBER 14, 2019
411 W. OCEAN BOULEVARD
CIVIC CHAMBERS, 5:30 PM**

Desmond Fletcher, Chair
Christian Cooper, Vice Chair
James Ahumada, Commissioner
Leonard Adams Jr., Commissioner
Dana Buchanan, Commissioner
Veronica Garcia, Commissioner



Porter Gilberg, Commissioner
Dianne McNinch, Commissioner
Justin Morgan, Commissioner
Maria Norvell, Commissioner
Joni Ricks-Oddie, Commissioner

Patrick Weithers, Manager of the CPCC

FINISHED AGENDA & DRAFT MINUTES

CALL TO ORDER (5:32 PM)

At 5:32 PM, Chair Fletcher called the meeting to order.

ROLL CALL (5:32 PM)

Commissioners Leonard Adams Jr., James Ahumada, Dana Buchanan, Veronica

Present: Garcia, Dianne McNinch, Justin Morgan, Maria Norvell, Joni Ricks-Oddie and Desmond Fletcher

Commissioners Porter Gilberg and Christian Cooper

Absent:

Also Present: Patrick Weithers, Manager of the CPCC; Terrance Pham, Special Investigator; Chris Crisostomo, Special Investigator; Monica Kilaita, Deputy City Attorney; Dina Zapalski, Commander, Long Beach Police Department; Ruby Marin-Jordan, Professional Standards Administrator, Long Beach Police Department; Jonathan Nagayama, City Clerk Specialist.

CONSENT CALENDAR (5:33 PM)

Passed the Consent Calendar

A motion was made by Commissioner McNinch, seconded by Commissioner Garcia, to approve Consent Calendar Items. The motion carried by the following vote:

Yes: 8 - Leonard Adams Jr., James Ahumada, Dana Buchanan, Veronica Garcia, Dianne McNinch, Justin Morgan, Maria Norvell and Desmond Fletcher

Absent: 3 - Porter Gilberg, Joni Ricks-Oddie and Christian Cooper

1. 19-076CP Recommendation to receive, file and close the following cases due to lack of evidence and/or witness cooperation or staff recommendation:

<u>CPC NO.</u>	<u>ALLEGATION(S)</u>
18-183	Failure to Take Action
18-202	Unbecoming Conduct
18-217	Unbecoming Conduct & Failure to Care for Property
19-026	Unbecoming Conduct
19-041	Failure to Take Action

A motion was made to approve the recommendation on the Consent Calendar.

REGULAR AGENDA (5:33 PM)

2. 19-074CP Recommendation to approve the minutes of the Citizen Police Complaint Commission Regular Meeting of Thursday, October 10, 2019 and Special Meeting of Friday, October 25, 2019.

Commissioner Ricks-Oddie joined the meeting.

A motion was made by Commissioner McNinch, seconded by Commissioner Morgan, to approve recommendation. The motion carried by the following vote:

Yes: 9 - Leonard Adams Jr., James Ahumada, Dana Buchanan, Veronica Garcia, Dianne McNinch, Justin Morgan, Maria Norvell, Joni Ricks-Oddie and Desmond Fletcher

Absent: 2 - Porter Gilberg and Christian Cooper

PUBLIC COMMENT (5:34 PM)

Damone Daniel spoke.

Chair Fletcher spoke.

MANAGER'S REPORT (5:37 PM)

Patrick Weithers, Manager of the CPCC, introduced Investigator Chris Crisostomo, thanked Commander Zapalski and the Long Beach Police Department for attending the CPCC Annual Training and updated Commissions concerns on final findings to bring back on December 19, 2019 meeting.

Chris Crisostomo, Special Investigator, spoke.

REMARKS FROM THE CHAIR AND COMMISSIONERS (5:43 PM)

Commissioner Norvell spoke.

Commissioner McNinch spoke.

Chair Fletcher spoke.

RECESS TO CLOSED SESSION (5:43 PM)

At 5:43 PM, there being no objection, Chair Fletcher recessed the meeting to Closed Session.

RECONVENE FROM CLOSED SESSION (10:02 PM)

At 10:02 PM, Chair Fletcher reconvened the meeting.

ROLL CALL (10:02 PM)

Commissioners Leonard Adams Jr., James Ahumada, Dana Buchanan, Veronica
Present: Garcia, Dianne McNinch, Justin Morgan, Maria Norvell, Joni
Ricks-Oddie and Desmond Fletcher

Commissioners Porter Gilberg and Christian Cooper

Absent:

3. 19-075CP Recommendation to receive Commission's vote and refer findings to the City Manager.

Chair Fletcher reported out from Closed Session the following actions taken:

[1] Case No. 18-195 Commissioners voted 9-0 on Allegation No. 1 - Failure to take Report for Officer accused;

[2] Case No. 19-011 Commissioners voted 9-0 on Allegation No. 1 - Unbecoming Conduct for Officer accused;

[3] Case No. 19-001 Commissioners voted 9-0 on Allegation Nos. 1 - Unbecoming Conduct for First, Second, Third, Fourth, Fifth, Sixth and Seventh Officers Accused, 2 - Unbecoming Conduct for Officer accused and 3 - Unbecoming Conduct for Officer accused;

[4] Case No. 18-214 Commissioners voted 9-0 on Allegation No. 1 - Improper Arrest for Officer accused;

[5] Case No. 18-199 Commissioners voted 8-1 on Allegation Nos. 1 - Failure to Investigate for Officer accused and 2 - Use of Force for Officer accused and 9-0 on 3 - Unbecoming Conduct for Officer accused;

[6] Case No. 18-065 Commissioners voted 9-0 on Allegation Nos. 1 - Misappropriation of Property, 2 - Unbecoming Conduct and 3 - Use of Force for Officers accused;

[7] Case No. 19-028 Commissioners voted 8-1 on Allegation No. 1 - Failure to Take Action for Officer accused;

[8] Case No. 19-037 Commissioners voted 9-0 on Allegation Nos. 1 - Failure to Care for Property, 2 - Unbecoming Conduct and 3 - Unbecoming Conduct for Officer accused;

[9] Case No. 18-188 Commissioners voted 9-0 on Allegation Nos. 1 - Unbecoming Conduct and 2 - Unbecoming Conduct for First and Second Officers accused;

[10] Case No. 18-218 Commissioners voted 9-0 on Allegation Nos. 1 - Unbecoming Conduct and 2 - Unbecoming Conduct for Long Beach Police Department accused;

[11] Case No. 19-027 Commissioners voted 6-3 on Allegation No. 1 - Unbecoming Conduct for Officer accused and voted 8-0-1 on Allegation No. 2 - Unbecoming Conduct for Officer accused; and

[12] Case No. 18-187 Commissioners voted 8-1 on Allegation No. 1 - Harassment for First and Second Officers accused and 9-0 on Allegation Nos. 2 - Use of Force for First, Second and Third Officers accused, 3 - Misappropriation of Property for First and Second Officers accused and 4 - Racial Bias for Officer accused.

A motion was made by Commissioner McNinch, seconded by Commissioner Adams Jr., to approve recommendation. The motion carried by the following vote:

Yes: 9 - Leonard Adams Jr., James Ahumada, Dana Buchanan, Veronica Garcia, Dianne McNinch, Justin Morgan, Maria Norvell, Joni Ricks-Oddie and Desmond Fletcher

Absent: 2 - Porter Gilberg and Christian Cooper

PUBLIC COMMENT (10:07 PM)

No members of the public addressed the commission.

ADJOURNMENT (10:07 PM)

At 10:07 PM, there being no objection, Chair Fletcher declared the meeting adjourned.

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Date: November 11, 2019
To: Patrick Weithers, Manager, Citizens Police Complaint Commission
From: Dina Zapalski, Commander, Internal Affairs
Subject: CPCC CASE #18-168

At the September 12, 2019 CPCC meeting the Commission recommended the department take the following actions:

- Review the Jail's Standard Operating Procedures for uncooperative subjects during the booking process, specifically when force is used to process photos/fingerprints of a subject.

Attached please find the response to the commission's request/recommendations.

Please feel free to contact me should you have any questions.

DMZ:dz
CPCC Case Response



Date: October 2, 2019
To: Dina Zapalski, Commander, Internal Affairs Division
From: Alex Avila, Deputy Chief, Support Bureau
Subject: **PROJECT ASSIGNMENT - INTERNAL AFFAIRS CASE #CIT2018-0153**

This memorandum has been prepared after a review of the Jail Divisions Standard Operating Procedures regarding uncooperative subjects during the booking process.

After an arrestee has been processed in the Booking facility, the arresting officer escorts the arrestee to the respective floor (4th or 6th). Then, the arrestee is turned over to the custody of the detention officers after a secondary search has been conducted at the jail floor counter.

The detention officers house inmates based on their crime classification either felony or misdemeanor housing. Prior to housing the inmate, detention officers process the inmate into the Live Scan system which includes photographs and fingerprinting. All felony inmates are required by law to submit to a DNA sample as part of the Live Scan process.

The Live Scan system utilizes the inmate's fingerprints to determine if the inmate has DNA on file. If the inmate's DNA is not on file, the Live Scan will prompt the detention officer to collect a sample. The detention officer requests the felony inmate to voluntarily submit a DNA sample. If an inmate refuses, pursuant to Penal Code Section 298.1, custodial personnel may employ reasonable force to collect blood specimens, saliva samples, or fingerprints.

Los Angeles County Inmate Reception Center will not accept an inmate without a proper Live Scan. In the event a combative, uncooperative non-felony inmate refuses to submit to the Live Scan process, it is common practice for the inmate to be temporarily placed in a safety cell. The inmate is temporarily housed in the safety cell until the inmate becomes cooperative.

The inmate is kept in the safety cell for no longer than a 24-hour period. A detention officer conducts routine safety checks on the inmate. During their safety check, the detention officer gauges the inmate's compliance for processing. As a last result, reasonable force can be used to process an inmate.

not be entered, but the name of the requesting Officer, the time, and the name of the Jail Supervisor will be entered.

Inmates Refusing to be Searched

If a prisoner refuses to be searched at the time of intake, the Detention Officer will attempt to persuade them if at all possible.

If this fails, the Detention Officer will notify the Detention Supervisor, and if possible, have another Detention Officer assist with the search.

If the prisoner is too violent for the Detention Officers to safely conduct the search, the Jail Supervisor will attempt to persuade the subject to cooperate and if unsuccessful the supervisor will request additional assistance.

If other officers are not available, the Detention Supervisor will contact the Booking Sergeant or call the Communications Center and request a Police Officer(s) to assist.

This action is to be entered in the Tiburon Daily Log and an Incident Report filed including a Use of Force report if necessary.

Under no circumstances will unsearched prisoners be placed in a cell. Unsearched prisoners will remain under constant supervision until assistance is obtained to complete the required search.

Prisoners who meet the criteria for a strip search or visual cavity search who refuse to comply shall be taken to a hospital for x-ray to confirm no weapons or contraband are concealed on their person.

4.300 PROCESSING PROCEDURES – MALE INMATES (6th Floor)

Prisoner will be logged in on the 24-hour count sheet, with information to be included:

- Last name, First name
- Time received
- Charge
- Felony/Misdemeanor
- Booking Number
- Processing/Searching Officer Initials

Prisoner's armband will be examined for accuracy.

Prisoner's Property Record and charge sheet will be given to the prisoner.

If prisoner was not screened in booking, Medical Staff will be alerted to perform a medical observation and screening. They will then initial when completed.

If the prisoner is eligible for an Own Recognizance Release, application will be made on the OR Release Scoring Sheet. Charges not eligible for OR include:

- Felonies
- Warrants
- Weekenders
- Commitments

- Transients
- Those who refuse to answer questions.

Phone Calls

Per Title 15, Section 1067 and 851.5PC, all prisoners are to have access to the free telephone immediately after processing. Taking into consideration the amount of time given them for phone calls, they should be placed into the general population in a timely manner where they will still have access to collect call telephones.

4.301 PROCESSING PROCEDURES - FEMALES (4TH FLOOR)

Processing procedures for females are identical to the procedures for males, with the following exceptions:

- Provisions for screening and care of pregnant and lactating women is provided for by on duty medical staff.
- All females have the right to summon and receive the services of any physician or surgeon of their choice (at their own expense) to determine pregnancy. Penal Code 3406 & Title 15 Sec. 1206(f)

4.302 SICK PRISONER PROCESSING

If at any time after a prisoner has been accepted into jail, it becomes apparent that he has injuries, or if he complains of injury or illness (which are not of an emergency nature), a Request For Examination and/ or Treatment of a Prisoner Form will be completed (PD 2100.010) and the on-duty Jail Nurse will be summoned.

Detention Officers will fill out the upper portion of the form, mark on the line "Jail" the location of the prisoner, write the time, and sign on the line provided.

4.303 ~~PROCESSING INCOMING PRISONER DNA~~

~~All Felony Arrestees will be required to provide a DNA sample if not already on file. The prisoner will be processed on Live Scan. Live Scan will indicate if a DNA sample is being requested.~~

The events in CMS will be completed by the processing officer and will also include a Move Event when placed into a housing area.

DNA Refusal Procedure
Title 15, Section 1059

Pursuant to Penal Code Section 298.1, authorized law enforcement, custodial or corrections personnel including peace officers may employ reasonable force to collect blood specimens saliva samples, or thumb or palm print impressions from individuals who are required to provide such samples, specimens or impressions pursuant to Penal Code Section 296 and who refuse written or oral request.

Inmates refusing to cooperate with detention officers in the process of obtaining a DNA sample will be sent to the County Jail and only returned to Long Beach Jail upon a sample being obtained.

4.400 FINGERPRINTS

Fingerprints are required for all Inmates booked for all offenses.

Live Scan

Enroute Bookings (no local charges, holding for transportation only). Signal Hill enroute bookings will be treated as a local booking. A housing location change is made either by the agency from where the prisoner originated or a Booking Clerk Typist.

On occasion prints are rejected for poor quality or computer and network issues. The Sheriff Department's Record Bureau will call both the jail and this department's Records Section to inform us that a re-roll needs to be performed. Live Scan messages will also indicate rejected prints.

In the event that additional charges are filed against a prisoner, a new set of paperwork will be sent to the jail marked "ADDITIONAL CHARGE"

4.500 CLASSIFICATION AND DESCRIPTION OF DETAINEES
Title 15, Section 1050

Arrestees are to be separated according to the below categories:
PC Sections 4001, 4002, and W&I Code Section 508

Pre-Sentenced Detainees

Any adult who is awaiting arraignment, hearing, trial or sentencing is classified as follows:

Male, felony

Male, misdemeanor

Female, felony

Female, misdemeanor



Date: November 11, 2019
To: Patrick Weithers, Manager, Citizens Police Complaint Commission
From: Dina Zapalski, Commander, Internal Affairs
Subject: **CPCC CASE #18-028**

At the June 2019 CPCC meeting the Commission recommended the department take the following actions:

- Request clarification on what happens after officer searches car. Consider a policy regarding completing an inventory sheet, even if car is not towed.

Attached please find the response to the commission's request/recommendations.

Please feel free to contact me should you have any questions.

DMZ:dz
CPCC Case Response

LONG BEACH POLICE DEPARTMENT IN-SERVICE TRAINING SECTION

Date: August 2018 – In-Service Update Sheet – Control Number: 2018-12

SEARCHING A VEHICLE WITHOUT A WARRANT INVENTORY SEARCHES

Inventory searches are a well-defined exception to the warrant requirement of the 4th Amendment. A vehicle inventory is NOT a search for evidence or contraband and should not be used as a ruse or pretext to search for narcotics or other evidence of illegal behavior. It is a procedure that officers use to account for personal property in a vehicle that is being impounded or stored. Evidence may be found during a lawfully conducted inventory search, in which case it may be used against the defendant in trial.

JUSTIFICATIONS TO INVENTORY

Vehicle inventories are supported by three justifications that allow officers to inventory lawfully impounded property WITHOUT first obtaining a warrant.

- 1) There is a need for law enforcement to protect the owner's property while it remains in police custody.
- 2) An inventory protects the police against claims or disputes over lost or stolen property.
- 3) An inventory is necessary for the protection of the police from potential dangers that may be located in the property.

REQUIREMENTS TO INVENTORY

In order to conduct an inventory search on a vehicle two requirements MUST be met.

- 1) The vehicle must have been lawfully impounded, AND
- 2) The inventory is conducted in accordance with a standardized inventory procedure aimed at accomplishing the justifications for inventory searches.

LAWFUL IMPOUND or STORAGE

The decision to impound/store and inventory must be made in good faith for lawful reasons, including:

- The vehicle was involved in an accident and cannot be driven.
- The vehicle must be moved to protect it or its contents from theft or damage.
- Circumstances listed in the vehicle code (stolen vehicle, etc.)
- The driver (sole occupant) is taken into custody.

STANDARDIZED INVENTORY PROCEDURE

LBPD Training Bulletin 27 *Impounding & Storing Vehicles* states, "The officer shall conduct a **full inventory** of each vehicle towed. This includes the glove compartment, trunk, and all containers in the vehicle; i.e., bags, cases, purses, etc. Items located during the inventory shall be noted in the narrative portion of the Vehicle Report form."

The Courts have ruled that inventory searches may not extend any further than is reasonably necessary to discover valuables or other items for safekeeping. For example, officers are not justified in looking into the heater ducts or inside the door panels of a vehicle, in that valuables are not normally kept in such locations. The supreme court has upheld inventory searches of the passenger compartments of vehicles. Additionally, inventory searches of the trunk have also been found valid. Finally inventory searches of containers, locked, or unlocked, may be conducted so long as the standardized inventory policy permits.

Because your authority with regard to inventories is specifically linked to the Department's internal protocols, at a suppression hearing you will have to be able to identify the Department's standardized policies and practices regarding inventories. You will then have to show that the inventory conducted in that case complied with the Department's policies.

EXAMPLES

As part of an inventory search, officers removed a loose dashboard console. The department's inventory policy extended to places where items of value are placed—glove compartment, center console, trunk, and under the seat. The policy also permitted opening close containers. In this instance, the court determined that removing the dashboard console was inconsistent with the department's protocol, and discovering hidden baggies of methamphetamine could not be justified as an inventory search.¹

Officers stop a driver for a traffic offense and arrest the driver for an expired license and DUI. Officers conduct an inventory search of the car and find a smart phone in a cup holder, they press a key on the phone to see if it works. The wallpaper showed a picture of a masked person who appeared to be the arrested driver holding a possible illegal assault rifle. The officers proceed to look through the phones text messages, photos and emails. The courts ruled that turning on a cell phone and searching it did not comply with the department's standardized inventory procedures.²

An officer notices several subjects carrying what he believes to be a TV. The officer knows that a TV had been stolen in the area a few days earlier. The officer sees the subject put the item in the trunk of a car and drive away. The officer followed the car. The driver stopped the car beyond the limit line at an intersection and made a right turn without signaling. The officer stopped the car. The driver had a suspended license. The officer told the subject the car would be towed and asked for the keys to do an inventory search. The officer searched the trunk and found a brand new locked toolbox that "looked expensive." The officer told the subject that the tool box would be taken to the police department for safekeeping. While en route with the subject to jail, the subject told the officer that the toolbox was not his and he obtained it two days earlier. The officer testified at the preliminary hearing that he followed the subject's car because he suspected criminal activity and wanted to investigate; he intended to stop the car as soon as a violation occurred. The officer testified that he has discretion to decide whether to tow a vehicle or not, and his department has written policies as to the exercise of such discretion even though he testified he had not seen the policies and he had 90% of the vehicles towed. The court noted in this case that "inventories of impounded vehicles are reasonable where the process is aimed at securing or protecting the car and its contents. This search was unreasonable and therefore violated the defendants 4th Amendment because a ruse was used to conduct an investigatory search."³

Sources: FLETC; Long Beach City Attorney's Office, CopWare Legal Sourcebook

¹ (Zabala (2018) 19 Cal.App.5th 335.)

² (Nottoli (2011) 199 Cal App.4th 531, 546.)

³ Aquilar (1991) 228 Cal.App.3d 1049)

LONG BEACH POLICE DEPARTMENT TRAINING BULLETIN

Robert G. Luna, Chief of Police

169 – Search and Seizure Guidelines

REVISED August 2018

SEARCH AND SEIZURE GUIDELINES

FOURTH AMENDMENT

The United States and California Constitutions prohibit the unreasonable search and seizure of an individual's home, person, or personal property. To prevent an unreasonable search, the Fourth Amendment makes it clear that law enforcement must possess a warrant to conduct a legal, reasonable search. Under the Fourth Amendment, a warrantless search is presumptively unreasonable and illegal. However, case law has created some exceptions to the warrant requirement. There are five situations in which officers may perform a search on an individual:

- Officers receive consent from the person to be searched;
- Officers are transporting a citizen in a police car;
- Officers are executing a warrant to search a residence for drugs;
- A search incident to arrest;
- A non-consensual search when an officer reasonably believes the person to be searched is armed and dangerous.

CONSENT SEARCHES

The law classifies citizen contacts as consensual encounters, detentions or arrests. For an investigative stop or detention to be valid, you must have a reasonable suspicion of the following:

- Criminal activity is afoot; and
- The person detained is connected with that criminal activity.

With reasonable suspicion, both the quality and quantity of the information you need is less than the probable cause needed to arrest or search. The Courts will look at the totality of the circumstances when deciding if your suspicion to detain was reasonable.

Reasonable suspicion is not required for a consensual encounter. Merely approaching someone in public and engaging them in conversation is not a detention; it is permissible to ask for consent to search, although this may convert the consensual encounter into a detention. The Courts will evaluate your language, tone of voice and physical actions to determine if the encounter was consensual.

TRANSPORTING A CITIZEN

The Courts have ruled that if officers have a duty to transport a person, such as transporting a person from a freeway, away from a dangerous situation, after a traffic stop, then an officer has the right to search the person before they enter the car. If there

is no duty to transport (no dangerous situation exists), and you are offering a ride, ensure that the individual knows that they may refuse the ride; however, they will be searched prior to transportation. If they accept the ride, a search is permitted.

EXECUTING A SEARCH WARRANT ON A DRUG HOUSE

Due to the dangerous nature of illegal drug trafficking, the Courts have ruled that officers who are executing a warrant to search a residence for drugs may, as a matter of routine, search the following people:

- Anyone present when officers arrive to execute the warrant;
- Any person who enters the residence while the search is being conducted, if the manner of their entry reasonably indicates the person is a resident or is otherwise closely associated with the residence, such as a person entering without knocking.

SEARCHES INCIDENT TO ARREST

When you have lawfully arrested a person that you intend to transport for booking, you may conduct a warrantless search of the suspect's person, and the property and area within the suspect's immediate control. A search under these conditions is considered a search incident (contemporaneous) to arrest, which means the search takes place at, or near, the time of arrest. A search incident to arrest should not be confused with an inventory search. An inventory search identifies property as part of the booking process.

NON-CONSENSUAL SEARCHES -TERRY STOP VERSUS TERRY FRISK

A Terry stop is different than a Terry frisk. A Terry stop involves the non-consensual seizure of an individual based on reasonable suspicion. For the seizure to be valid, an officer must have facts that would lead a reasonable person to conclude that a crime has been, is being, or is about to be committed, and the person being investigated is somehow involved; a non-consensual search during a Terry stop is not automatically permitted.

In *Terry v. Ohio*, 392 US 1 (1968), the United States Supreme Court determined that an officer may conduct a Terry frisk, also referred to as a pat search. A Terry frisk is a limited search for weapons, based on reasonable suspicion that the individual, who has been lawfully detained, is presently armed and dangerous. This type of frisk does not require consent, but the officer must articulate specific facts that would lead a reasonable person to conclude the individual is armed and dangerous. A generalized, non-specific concern for officer safety is not sufficient for a Terry Frisk. According to POST Learning Domain 16, the following factors may support an officer's reasonable suspicion to conduct a Terry Frisk:

- A bulge in the subject's clothing that is the size of a potential weapon;
- The subject is wearing a heavy coat when it is warm;
- The subject is appearing overly nervous;
- The stop occurred in an area known for violence;
- The subjects outnumber the officer(s);
- The subject is stopped during nighttime.

While conducting a Terry Frisk, an officer may search the subject's outer clothing and garments by feeling, crushing, or twisting the clothing for weapons or hard objects that

can be used to hurt the officer. Without voluntary consent, reaching inside pockets or other areas is prohibited unless the object reasonably feels like a weapon or item that could be used as a weapon, or the subject's clothing is so rigid or heavy that an officer could not rule out the possibility of a weapon. If an officer encounters an object they cannot immediately identify as a weapon, they may not reach into the subject's pocket and must continue with the search. If during the frisk an officer immediately identifies an object as contraband, he or she may retrieve the object; otherwise, the officer may not further manipulate an area or object unless there is still concern it may be a weapon, or an item that may be used as a weapon.

Reasonable suspicion to stop an individual does not automatically mean the officer has reasonable suspicion to frisk. An officer may have reasonable suspicion to stop an individual, but may lack the additional facts that would lead a reasonable person to conclude the individual is armed and dangerous. Without these additional facts, the officer may not conduct a limited search for weapons.

DETERMINING IF A PERSON IS ARMED AND DANGEROUS

Depending on the nature of the crime under investigation, the Courts have held that officers who are detaining a suspect automatically have grounds to search a suspect if the crime under investigation was closely associated with any of the following:

- **Violence** - If there is reasonable suspicion to believe the detainee committed a crime of violence; e.g., the crime under investigation is a homicide, assault with a deadly weapon, shots fired, or robbery.
- **Possession of weapons** - The suspect was detained for possession of a concealed or illegal weapon.
- **Burglary** - Burglary suspects often carry weapons or tools, such as knives and screwdrivers which could be used as weapons.
- **Car theft** - Car theft suspects often carry tools that could be used as weapons.
- **Vehicle Pursuits** - All occupants following a pursuit.
- **Drug sales** - Any person who is lawfully detained for drug sales because guns and violence are such an integral part of drug dealing.
- **Parole** - If the detainee is on parole or searchable probation.

The following circumstances require an officer to clearly articulate the reasons for the search:

- **Bulge** - If a bulge is consistent with a weapon or if the person is attempting to conceal the bulge.
- **Hostile, agitated** - A suspect's overt hostility toward an officer or highly agitated state is a strong indication that he or she constitutes a danger and may justify a search.
- **History of hostility** - If a suspect, although not overtly hostile at the time, has a history of hostility toward officers a search may be justified.
- **Under the influence** - A suspect who is under the influence of alcohol or drugs may be considered dangerous if his behavior is unpredictable or he is otherwise unable to control himself.
- **Failure to comply** - A detainee's failure to comply with an officer's commands may be an indication of hostility and may, depending on the circumstances, justify a search (bulky clothing, putting hands in pockets after being told not to, etc.).

- **Nervousness** - A suspect's display of nervousness, including failure to make eye contact, has little or no relevance as an indicator of danger unless the nervousness is extreme or unusual.
- **Furtive gesture** - The phrase furtive gesture is used to describe a movement by a suspect, usually of the hands or arms that reasonably appears to have been made in response to seeing an officer and was made in such a manner that it appeared the suspect hoped the gesture would go unnoticed. A furtive gesture is of concern because of the possibility that the suspect may be attempting to hide or retrieve a weapon, but a furtive gesture by itself does not justify a search. If a gesture is furtive, the officer must clearly articulate why the gesture was threatening.
- **Sudden movement** - While the objective of a furtive movement is to go unnoticed, the objective of a sudden movement is speed and surprise. Whether the movement justifies a search depends on exactly what the suspect did, the surrounding circumstances, and the officer's reasonable interpretation of both. If an officer believes that a sudden movement was threatening, then an officer must clearly articulate why it was threatening.

The following circumstances are relevant factors; however, they are looked at in the totality of the situation:

- **Size of suspect** - The size of the suspect by itself does not justify a search, but is sometimes noted by the court as a relative circumstance.
- **Officers outnumbered by suspects** – There is potentially increased danger to officers when they are outnumbered.
- **Possession of other potential weapon** - e.g., baseball bat, hammer, flashlight.
- **Armed and dangerous companions** – This is not necessarily enough for a search, but may help to justify one depending on the existence of other factors.
- **Assuming the position** - A suspect's act of assuming a search position without being asked is suspicious and may imply consent.
- **Criminal history or gang affiliations** - A search is warranted if the subject is a known gang member or has a known criminal history involving violence or weapons.
- **Detainee on probation** - In the absence of search conditions, the fact that the suspect is on probation is a relevant circumstance.
- **High crime area** - If a detention occurs in an area where crime, gang or drug problems are rampant, this is not enough by itself to justify a search, but is a relevant circumstance that will be considered with other circumstances.
- **Darkness, nighttime or deserted area** – The fact that it may be nighttime, dark or the area deserted are relevant circumstances and important factors in assessing the totality of a situation.
- **Tips from citizen informants** – A tip is considered reliable if from an identified informant, based on the informant's personal knowledge and the information is provided as an act of good citizenship, not gain.
- **Tips from police informants** – A search is admissible only if there is reason to believe the tip is reliable.
- **Anonymous tips** – A search is admissible only if there is reason to believe the tip is reliable.

VEHICLE OCCUPANTS

The rules for conducting a search of a driver or passengers during a detention do not change because a vehicle stop has occurred. The Courts have ruled you can order a lawfully detained driver out of a vehicle. The same rule applies to passengers due to officer safety concerns. However, if you assert any additional authority over a passenger, you will have to convince the court that your action was reasonably necessary. The following circumstances may establish the need to search a vehicle occupant:

- To ensure your safety or the safety of others;
- To carry out your duties relating to initial detention; or
- To investigate that the passenger was involved in criminal activity.

SEARCHING THE OPPOSITE GENDER

If you have reason to believe a person is a threat to your safety, you should search that person immediately. The gender of a person should have no impact on officer safety practices.

REPORTING

Arrests resulting solely from evidence found during a search should be thoroughly documented; including the reasonable suspicion resulting in the detention and facts that support conducting a search.

CONCLUSION

Officers take an oath to enforce the laws of the State and uphold the Constitution of the United States and California, both of which protect individuals against unreasonable searches and seizures. Enforcing the laws, which brings about officer safety concerns, yet respecting the rights of those whom you serve, is a careful balancing act.

Reasonable suspicion may not be based, in whole or part, on broad profiles that cast suspicion on entire categories of people without any individualized suspicion of the person stopped. When the community perceives that searches are being conducted arbitrarily or discriminately, the result can be anger, suspicion, litigation, and lack of community support.

AUDIT RESPONSIBILITY

Patrol Bureau

LONG BEACH POLICE DEPARTMENT IN-SERVICE TRAINING SECTION

Date: August 2018 – In-Service Update Sheet – Control Number: 2018-11

AUTOMOBILE EXCEPTION – 4th AMENDMENT WARRANT REQUIREMENT: *Collins v. Virginia*, 2018 U.S. LEXIS 3210 (U.S. May 29, 2018)

The US Supreme Court held that the automobile exception does not permit the warrantless entry of a vehicle located within the curtilage of a home. The partially enclosed section of a driveway where a stolen motorcycle was parked constituted part of the home's curtilage; the driveway enclosure was an area adjacent to the home where activity of home life extended.

Background

In June 2013, a Virginia (VA) police officer noted a driver of an orange and black motorcycle committed a traffic infraction. The officer attempted a traffic stop, but was unable because the motorcycle sped off. Several weeks later, another officer of the same department noted that a driver of an orange and black motorcycle was speeding. The officer attempted a traffic stop, but the driver again sped away.

The officer further investigated and learned that the motorcycle was likely stolen and in the possession of petitioner Ryan Collins. The officer observed on Collins' Facebook (FB) profile the same orange and black motorcycle in the driveway of a house. The officer found the address, drove there, and parked his car on the street. From the street, he could see what appeared to be a motorcycle under a tarp. The motorcycle was parked at the same location in the driveway as observed on Collins' FB page.

The officer approached the house, took a photograph of the motorcycle from the sidewalk, walked onto the property and removed the tarp. It appeared to be the same motorcycle that had been previously seen speeding. A record check of the license plate revealed it was stolen.

The officer took photographs of the uncovered motorcycle, replaced the tarp, and returned to his vehicle to wait for Collins. Collins arrived, agreed to speak to the officer and confessed that the motorcycle was his and he had bought it without title. Collins was arrested.

Collins was indicted by a VA grand jury for receiving stolen property. Collins moved to suppress the evidence from the warrantless search of the motorcycle, contending that the officer trespassed into the curtilage of the house to investigate the motorcycle. At trial, the court denied the motion, and Collins was convicted. Collins appealed his conviction.

The VA Court of Appeals affirmed the trial court's ruling, stating that the Officer had probable cause to believe the motorcycle was the same motorcycle used to commit the traffic infractions. The Court of Appeals held that, even though the officer did not have a warrant, his actions were lawful as "numerous exigencies" vindicated his contact with the property and the motorcycle. Collins sought review by the Supreme Court of VA.

The Supreme Court of VA affirmed the Court of Appeals' holding, finding that the case was governed by the 4th Amendment's automobile exception to the warrant requirement. The VA Supreme Court concluded that the warrantless search of the motorcycle in the driveway was justified because the Officer had probable cause to believe that the motorcycle was contraband. The US Supreme Court granted review of the case to address the question of whether the automobile exception to the 4th Amendment permitted an officer to enter the curtilage of a home without a warrant to search a vehicle parked therein.

Discussion

The Supreme Court of the US stated that this case presents the question whether the automobile exception to the 4th Amendment permits an officer, uninvited, without a warrant, to enter the curtilage of a home to search a vehicle parked therein; it does not. The principal justification of the automobile exception was the ready mobility of vehicles (*California v. Carney*). The Court stated that it previously had held that automobiles were subject to long-standing governmental controls and regulations, unlike homes. Officers can stop vehicles when the vehicle is used to violate the law, or when other problems with the vehicle arise. When such justifications are present, officers may search the vehicle without a warrant, if they have probable cause to do so.

However, the Court noted that this exception of search without a warrant does not apply to homes, except in limited circumstances. The Court stated that persons have a right in their homes to be free from arbitrary government harassment and intrusion. The Court observed that the “curtilage” – the area immediately associated with the home and to which the activity of home life extends – has been given constitutional protections under the 4th Amendment as well. Protection of curtilage is “protection of families and personal privacy in an area intimately linked to the home, both physically and psychologically, where privacy expectations are most heightened (*California v. Ciraolo*.) The Court stated that, if an officer intrudes on the curtilage of a home to obtain evidence or information, a search of the home has occurred under the meaning of the 4th Amendment (*Florida v. Jardines*).

The Supreme Court found the driveway with the motorcycle was part of the curtilage of the home and protected by the 4th Amendment noting that the area where the motorcycle was parked at the time of the search sat “behind the front perimeter of the house that is enclosed on two sides by a brick wall about the height of a car and on a third side by the house.” The officer physically intruded on the curtilage to obtain evidence and information, without a warrant. His intrusion not only invaded Collins’ Fourth Amendment interest in the motorcycle searched, but also invaded his privacy interest in the curtilage of the home.

The Court maintained the automobile exception did not justify the invasion of curtilage as “the scope of the automobile exception extends no further than the automobile itself” (*Pennsylvania v. Labron*). In response to Virginia’s request to expand the scope of the exception, the Court concluded that nothing from case law suggested that the automobile exception allowed officers to enter the home or curtilage without a warrant to access a vehicle. The Court concluded that expanding the exception would “undervalue the core” of protections under the 4th Amendment and alter the exception to be “a tool with far broader application.”

The Court reasoned that an officer cannot search a vehicle parked within a home or curtilage as part of the automobile exception because it is an intrusion on the person’s 4th Amendment interest in the home and curtilage. The Supreme Court of the U.S. reversed the judgment of the Supreme Court of VA and remanded the case for further proceedings not inconsistent with this opinion.

Source: CPOA Client Alert, June 8, 2018, Courtesy of James R. Touchstone, Esq.

To read the full article select the following link:

[CPOA Client Alert; Collins v. Virginia, 2018 U.S. Lexis 3210 \(U.S. May 29, 2018\)](#)

For other client alerts issued by the CPOA, select the following link:

[CPOA Client Alerts](#)

**CITY OF LONG BEACH
CITIZEN POLICE COMPLAINT
COMMISSION AGENDA**

**THURSDAY, DECEMBER 12, 2019
411 W. OCEAN BOULEVARD
CIVIC CHAMBERS/LOUNGE, 5:30 PM**



Desmond Fletcher, Chair
Christian Cooper, Vice Chair
James Ahumada, Commissioner
Leonard Adams Jr., Commissioner
Dana Buchanan, Commissioner
Veronica Garcia, Commissioner

Porter Gilberg, Commissioner
Dianne McNinch, Commissioner
Justin Morgan, Commissioner
Maria Norvell, Commissioner
Joni Ricks-Oddie, Commissioner

Patrick Weithers, Manager of the CPCC

CLOSED SESSION

Closed Session pursuant to Section 54957 of the California Government Code for the purpose of consideration of personnel discipline matters.

1. 19-083CP	<u>CPCC NO.</u>	<u>ALLEGATION(S)</u>
	19-034	Unbecoming Conduct
	19-015	Improper Search & Unbecoming Conduct
	19-016	Dishonest & Unbecoming Conduct
	19-029	Failure to Care for Property
	19-031	Use of Force & Unbecoming Conduct
	19-004	Unbecoming Conduct, Use of Force, Improper Search & Misappropriation of Property

I, Kyle Smith, City Clerk Specialist, certify that the agenda was posted not less than 72 hours prior to the meeting.

ks

NOTE:

If oral language interpretation for non-English speaking persons is desired or if a special accommodation is desired pursuant to the Americans with Disabilities Act, please make your request by phone to the Office of the City Clerk at (562) 570-6101, 24 business hours prior to the Charter Commission meeting.

Kung nais ang interpretasyon ng sinasalitang wika para sa mga taong hindi nagsasalita ng Ingles o kung nais ang isang natatanging tulong ayon sa Americans with Disabilities Act, mangyaring isagawa ang iyong hiling sa pamamagitan ng telepono sa Opisina ng Clerk ng Lungsod sa (562) 570-6101, 24 oras ng negosyo bago ang pagpupulong ng Charter Commission.

Si desea interpretación oral en otro idioma para personas que no hablan inglés o si desea una adaptación especial en conformidad con la Ley de Estadounidenses con Discapacidades, haga su solicitud por teléfono a la Oficina de la Secretaría Municipal al (562) 570-6101, 24 horas hábiles antes de la reunión de la comisión de estatutos.

បើមានការចង់បានឲ្យមានការបកប្រែភាសាផ្ទាល់មាត់ឲ្យអ្នកមិនចេះនិយាយអង់គ្លេស ឬបើមានការចង់បានឲ្យមានដំណោះស្រាយពិសេសដោយយោងតាមមាត្រាច្បាប់ស្តីពី ជនពិការអាមេរិកាំង សូមមេត្តាធ្វើសំណើអ្នកតាមទូរស័ព្ទដោយហៅទៅការិយាល័យស្មៀន ក្រុងតាមរយៈលេខ (562) 570-6101 (24 ម៉ោងធ្វើការមុននឹងចាប់ផ្តើមបើកកិច្ចប្រជុំ គណកម្មការធម្មនុញ្ញ)។

If written language translation of the Commission agenda and minutes for non-English speaking persons is desired, please make your request by phone to the Office of the City Clerk at (562) 570-6101, 72 business hours prior to the Commission meeting.

Kung nais ang pagsasalin ng nakasulat na wika ng agenda ng Komisyon at ang minutes para sa mga taong hindi nagsasalita ng Ingles, mangyaring isagawa ang iyong hiling sa pamamagitan ng telepono sa Opisina ng Clerk ng Lungsod sa (562) 570-6101, 72 oras ng negosyo bago ang pagpupulong ng Commission.

Si desea obtener la traducción escrita en otro idioma de la agenda y actas de la comisión para personas que no hablan inglés, haga su solicitud por teléfono a la Oficina de la

**បើមានការចង់បានឲ្យមានការបកប្រែឯកសារស្តីពីរបៀបរាវ និងកំណត់ហេតុឲ្យ
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