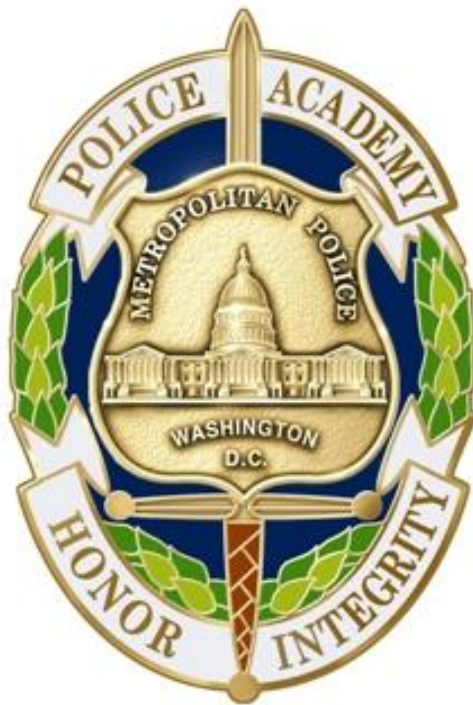


Metropolitan Police Academy



4.1 Introduction to Criminal Law

July 26th, 2023

Introduction

As a law enforcement officer, you will be entrusted with a significant amount of authority, including the legal authority to stop, detain, search, arrest, and ultimately limit or revoke the freedoms of your fellow community members. This authority is not to be taken lightly and must be respected by all police officers. Furthermore, the scope, reach, and limitations of this authority must be thoroughly understood and never abused.

In this lesson, you will learn how serious these rights and freedoms are, how they came to be, and what precedents and standards of proof are in place to guide you in each of these police procedures and functions. You will learn about and discuss historic cases involving decisions made by the Supreme Court that affect how police officers perform their duties, and how their actions are weighed in court using standards of proof. You will learn the basics of criminal law needed by police officers, precedent, the categories of crimes, criminal procedures in Washington, DC, and the laws of arrest.

The concepts discussed in this lesson will be used and practiced in the field, and it is imperative that all patrol officers understand them in order to be effective while also respecting the rights of American citizens protected by the US Constitution and the Bill of Rights.

4.1.1 Appreciate the limitations on law enforcement placed in the Bill of Rights

Writ of Assistance

Limitations on government authority and its associated concepts have been popular topics for political theorists since the time of ancient Greeks. In fact, the American Revolution was inspired by such topics after challenges to powerful court orders enforced upon colonists by the British Empire. These court orders, known as writs of assistance, allowed British officers to conduct searches of premises for contraband without justifiable reason or a description of the contraband being sought. The royal authorities in the thirteen colonies used such writs to enforce massively unpopular taxes imposed by British laws, such as the Stamp Act and Navigation Acts. Unreasonable searches and seizures became a major source of tension in pre-revolutionary America.

In Boston, James Otis represented merchants challenging the writs by arguing that they were a violation of the colonists' natural rights. When legal and political pleadings did not result in the end of the unpopular taxes nor the unpopular searches to enforce them, the colonists began to resist by force. There were many incidents where mobs of angry colonists violently resisted the Royal officials as they searched for contraband goods or where the mobs targeted the homes and persons of these officials after particularly unpopular seizures occurred. The cycle of mob violence followed by royal crackdowns to restore order contributed to the outbreak of the American Revolution.

After the American colonists won the Revolutionary War and while they were setting up their new government and legal system, they were determined to prevent the injustices they had suffered under British rule. The abuses associated with the writs of assistance, and many of the arguments made by colonists like James Otis, figured prominently in the writing of the Constitution and the Bill of Rights. These documents contain several explicit limitations on the powers and authority of law enforcement personnel.

Fourth Amendment:

As a preventative measure and a result of the writs of assistance, James Madison introduced the Fourth Amendment to the Constitution. It states:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

This amendment protects all Americans from unreasonable searches and seizures by the government. Furthermore, any evidence seized in an unreasonable search is inadmissible in court under the **exclusionary rule** which prohibits introduction of fruits (unlawfully seized items) of the poisonous tree (the unlawful search). Police officers must understand and strictly adhere to this and all rights granted to Americans, while also performing their duties which will often require conducting reasonable searches and seizures.

The text of the Fourth Amendment also establishes the strong preference for searches and seizures to be conducted with a warrant, and what the general requirements for such warrants are.

Fifth Amendment

This amendment states, in relevant part, that "...nor shall any person be compelled in any criminal case to be a witness against himself..." Thus, one constitutional right provided by the Fifth Amendment that affects police procedure is that officers cannot compel an individual to engage in self-incrimination, meaning compelling a person to make a statement against him or herself. Invoking this Constitutional protection is commonly called "pleading the Fifth" or "taking the Fifth." More importantly, particularly to the patrol officer, it affects the procedures for questioning, interviewing, and interrogating suspects and arrestees. The well-known requirement to "read suspects their rights" is based on the Fifth Amendment. Doing so ensures that suspects are aware of their right to have an attorney present during questioning, that an attorney can be provided if they cannot afford one, and that anything they say can be used against them in a court of law.

Sixth Amendment

The Sixth Amendment states:

In all criminal prosecutions, the accused shall enjoy the right to a public and speedy trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law; to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

Although much of the protection provided to arrestees by the Sixth Amendment applies to the due process procedures of the court system in the handling of their cases, it is important for police officers to understand much of this system relies upon officers' work, and that their actions and inactions can affect the efficiency of the criminal justice system. All procedures for processing an arrest, following through with the collection of evidence, completion of all requisite paperwork and court forms in a timely manner, as well as arriving to all scheduled court appearances and providing all applicable items of evidence to the prosecutor must be diligently observed so as to not deny the defendant's right to due process. Ensuring

that these tasks are all completed prevents Sixth Amendment violations which would lead to, among other things, the dismissal of a case.

Eighth Amendment

This amendment provides that, “Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishment inflicted.” The protections provided by the Eighth Amendment apply both to the procedures of the court system as well as police officers in their handling of prisoners and arrestees.

Cruel and unusual punishment does not only refer to court ordered sentencing or punishment, but to the treatment received while in our custody. Prisoners must be treated and housed humanely. Officers are to use the minimum amount of force necessary to bring an incident under control (GO 901.07 – Use of Force). Excessive force and abusive/degrading treatment is an Eighth Amendment violation. Prisoners must not be deprived of medical attention, food, or shelter while in your custody. Remember that, regardless of the nature of the crime committed, once a person is arrested and in your custody, you are responsible for their welfare.

4.1.2 Define the components of a crime

There are numerous definitions of the term **crime**, nearly all of which involve an act or omission which violates a law of a state and is punishable by that state. The definition used by MPD is, “A positive or negative act in violation of penal law; an offense against the state (District of Columbia or United States); Any social harm defined and made punishable by law.”

The commission of a crime involves a criminal act along with some level of criminal intent.

Criminal Act

For a crime to be committed, a criminal act must occur. The concept of criminal act stems from the Latin phrase “*actus reus*,” meaning “guilty act,” in the English system of common law which was adopted and modified by the United States. There are two types of criminal acts:

- **Positive Act:** Positive criminal acts are the most common type encountered by patrol officers. They involve voluntary behavior and physical action which violates the law or laws of the state. An example of a positive act is the physical removal of merchandise from a store aisle, placing items in one’s pocket, and passing registers and exiting the store without paying. In this case, a theft, numerous positive acts were carried out in the commission of the crime.
- **Negative Act:** This type of criminal act is just as much a crime as a positive act; however, it involves a voluntary omission or failure by the offender to physically act. These cases involve situations where, by law, certain actions are required to be taken by the offender. The omission of such action is considered a criminal act despite the fact that no physical action occurred. A simple example of this is the US tax laws. Filing one’s taxes is an action which, by law, must be done. Failing to do so (doing nothing) is a criminal act. Police officers, firefighters, medical professionals, and others, are required to take action in a variety of situations where the failure or omission of such actions can lead to the injury or death of others. As such, failure to take action in such cases may constitute a criminal act. For example, consider a police officer who witnesses an armed robbery but chooses to not take any form of police action and the armed robber later shoots

another individual at a bus stop. The police officer's failure to act (to include calling 911) is a negative criminal act.

Criminal Intent

As described above, the commission of a crime involves a criminal act (positive or negative) accompanied by some form of intent. Without some level of intent, the criminal act does not always constitute a crime. Criminal intent is defined as, "An intent to commit an act without any justification, excuse, or other defense"

Just as English common law required the criminal act (*actus reus*), intent must also accompany that act in order to hold someone culpable. "*Mens rea*," meaning "the guilty mind," is another Latin phrase used to gauge criminal liability. The English common law system stated, "The act is not culpable unless the mind is guilty." This gauge is in place to ensure that the courts and law enforcement officers take steps to determine if a criminal act was committed purposefully or by accident.

Tort

Separate from the types of crime described thus far, a tort refers to a civil matter which MPD defines as "a civil wrong for which a remedy can be obtained in the form of damages." The most important element in the definition of tort is the word "civil" as it refers to the concerns of, or between, private individuals. This is different than a criminal act which refers to the concerns between individuals and government. Tort law enables the filing of lawsuits, such as the suing of a person or entity by another, for a variety of reasons including negligence, personal injury, or defamation. Tort cases normally result in some form of relief to the plaintiff (the one bringing the lawsuit) such as a court order that the defendant (the one against whom the lawsuit is brought) must do or cease doing some action, or the provision of monetary compensation or reimbursement.

Although patrol officers respond to cases involving criminal law far more often than torts, many calls for service handled by MPD are actually civil in nature and may result in tort cases. MPD does not take direct action in these cases and advises parties to pursue resolution in civil court on their own.

4.1.3 Distinguish Principals from Accessories

Principals

The principal in a criminal offense is the person or persons participating in the criminal act, or actively participating in the commission of a crime.

According to § 22-1805, in prosecutions for any criminal offense:

- All persons advising, inciting, or conniving at the offense
- Or aiding or abetting the principal offender
- Shall be charged as principals and not as accessories

Examples:

Suspect A and B plan a bank robbery in which Suspect A enters the bank and demands money from the teller at gunpoint, while Suspect B waits outside in a vehicle acting as a lookout and getaway driver. Both A and B can be charged with the offense of robbery even though Suspect A carried out the act inside of the bank alone.

Suspect A and B plan a bank robbery in which Suspect A enters the bank and demands money from the teller at gun point. This time, Suspect B helps plan the offense, provides a floor plan of the bank to Suspect A, and lends him the firearm to use in the offense, but stays home instead of assisting in the commission of the act. Again, both are charged with the robbery, even though Suspect B was at home at the time of the offense.

Suspect A plans a bank robbery in which he enters a bank and demands money from the teller at gunpoint without any assistance from Suspect B. After completing the criminal act, Suspect A drives to Suspect B's house, tells him about the offense and asks to stay a few days to avoid being caught. Suspect B allows him to stay and hide. Suspect A is the principal and charged with the Robbery. Suspect B, in this case, cannot be charged as a principal with the offense of Robbery, but instead as an accessory after the fact.

Accessory After the Fact

According to § 22-1806, accessory after the fact is a separate and distinct offense in which:

- A felony or misdemeanor occurred
- A particular person, other than the accused, has committed the offense
- The accused must have knowledge that that person committed the offense
- The accused received, relieves, comforts, or assists that person
- And the accused does so with the intent to hinder or prevent that person's apprehension, trial, or punishment

The penalties for Accessory After the Fact depend upon the seriousness of the offense committed by the Principal. If that crime has a maximum sentence of life in prison, the accessory faces up to 20 years imprisonment. In all other cases, the accessory offense carries a maximum of one-half the maximum penalty faced by the principal.

4.1.4 Categorize the Crimes recognized by DC Code

Misdemeanor: These offenses are punishable by imprisonment for a period of no more than one year.

Felony: These are more serious offenses that are punishable by imprisonment for a period of over one year.

Sentencing

Felony offenses are described as punishable by a period of imprisonment. The period of imprisonment corresponds to a length of time that varies greatly depending upon the type of offense. Recall that the minimum sentence is 1 year unless otherwise designated in the DC Code. For example:

- When written as "not more than 5 years," it should be taken to mean "at least 1 year in prison or up to and including 5 years in prison."
- When written as "not less than 2 two years nor more than 15 years," a person may be sentenced to at least 2 years or at most 15 years in prison, or some period of years in between.

Always look at maximum sentences first: "not less than 2 years nor more than 15 years" is a less severe penalty than "up to 20 years." In contrast, "not less than 2 years nor more than 15 years" is more severe than "not more than 15 years" because of the minimum requirement involved. "Not more than to 15

years” can result in a sentence of 1 year, whereas “not less than 2 years nor more than 15 years” cannot result in a sentence of less than 2 years.

While Armed

As defined in 22-4502, if during any felony offense, the defendant uses or is in possession of a weapon, the crime is charged with the addition of “while armed.” For example, if a defendant is arrested for burglary II and is found to have a firearm in his waistband, he or she should be charged with “burglary II while armed.” Penalties are enhanced when a crime is committed by an armed suspect, whether the weapon was used in the offense or not.

4.1.5 Distinguish General Intent from Specific Intent

As previously described, all crimes require not just the criminal act, but criminal intent as well. There are two types of intent that can apply to different offenses based on the terminology used to describe the nature of the particular offense. The types of intent are *general* and *specific*:

General Intent:

- The person did the act of their own choice or free will
- The person does not need to have the intent to or even be aware of the fact that they are breaking the law
- All crimes must have at least general intent

For Example: Simple assault is a general intent crime. As such, if John pushes Michael in the chest, then punches Michael in the face, he must only do so willingly to commit the offense of simple assault. The only required level of intent is that John willfully pushes and punches Michael. It is not necessary that John intended to hurt or cause injury to Michael, and Michael does not have to suffer any injuries to constitute the offense.

Specific Intent:

- The person must have a particular wrongful state of mind
- Not only must the defendant do the act with free will, but the defendant must intend a certain outcome, regardless of whether the act results in that outcome or not.

For Example: Malicious disfiguring is a specific intent crime in which an assault occurs with not just a general intent to commit the assault, but with a specific intent to cause a certain type of injury which leaves the victim less complete, perfect, or beautiful. If John pushes Michael in the chest, punches Michael to the ground, then holds Michael down and pours sulfuric acid on his face in an effort to cause permanent chemical burns which would leave Michael’s appearance less perfect and beautiful, John has committed malicious disfiguring. In this case, committing the assault alone does not constitute the offense, rather specific intent to cause permanent injury must be articulated.

General intent is always present before specific intent can be developed. For a crime to occur, general intent must be present. Some crimes require that the accused not only had the general intent to commit the act, but specific intent as well to produce a certain outcome of that criminal act.

4.1.6 Identify the factors that absolves someone of a criminal responsibility

Self-Defense:

Self-defense is defined as, “A use of force to protect oneself from an attempted injury by another. If justified, self-defense is a defense to a number of crimes.” This defense demonstrates good reason to conduct a thorough preliminary investigation in order to determine what exactly happened. What may appear to be a crime or assault may be self-defense, and an officer must be able to determine what if any, action is to be taken. Although self-defense can be determined on the scene of an offense, it is also determined through court proceedings to absolve someone of criminal responsibility when applicable.

Insanity:

This defense “reflects society’s belief that the law should not punish defendants who are mentally incapable of controlling their conduct.” This defense is determined through court procedures and does not affect the way MPD enforces the law.

Although these are the only factors that absolve someone of criminal responsibility, officers should thoroughly evaluate situations and circumstances to determine whether criminal intent is present, and whether an arrest should be made. For example, it is generally accepted that children under the age of seven are unable to develop criminal intent. When dealing with offenders of this age or younger, officers should consult with an MPD official and an official from MPD Youth and Family Services Division in deciding what action should be taken.

4.1.7 Differentiate the standards of proof

Mere Suspicion

Often described as a gut feeling or a hunch, mere suspicion is just that: a feeling which is not articulable by the officer that someone or something is suspicious, out of place, or potentially dangerous. Mere suspicion does not meet the standard of proof required for a stop, search, or arrest, but often can lead to a higher level of proof after investigation. Mere suspicion is enough to make an officer take notice of something happening without any objective facts to base the suspicion on.

For Example: While walking your beat, a person walking by gives you a very strange look and fails to respond when you say hello. This behavior may be considered out of the ordinary depending on the circumstances, and an officer may become suspicious of that person. In this circumstance, there are no objective facts to prove anything more about the person or what he or she is doing.

Reasonable Suspicion

This is a standard of proof in which the officer can articulate facts about the person or situation that leads the officer to act, and is the standard required to conduct a stop and/or a protective pat-down. Reasonable suspicion is more than mere suspicion, but still does not provide enough information to make an arrest or conduct a search. Reasonable suspicion is a minimal level of justification based on articulable facts. At this level, the officer can explain and justify the action that was taken.

For Example: While canvassing your beat for a robbery suspect, in which a detailed lookout (description) for the suspect has been provided, reasonable suspicion can be articulated by an officer who sees

someone matching that lookout running from the area or hiding in an alley. Reasonable suspicion justifies the stop of that suspect.

Probable Cause

This standard of proof is required for all arrests, searches, seizures, and warrants. It relies upon the objective facts of the situation that an officer can articulate and is defined as a set of facts, circumstances, or reliable information which would lead a reasonable, prudent, and cautious police officer to believe that a crime has been committed, is being committed, or is about to be committed and that a certain person is responsible.

There are no rigid rules for establishing probable cause. You must gather and evaluate all of the information available to you and weigh it against the DC Code definition. Probable cause, meaning it is more likely than not, is one of the most commonly used terms in law enforcement. It has been reviewed and defined by the US Supreme Court in countless decisions interpreting the scope of the Fourth Amendment.

Beyond a reasonable doubt

The standard for conviction in a criminal trial is proof beyond a reasonable doubt. This standard of proof is not used by officers in the field; it applies to triers of fact, judges and juries, in court. In other words, a judge or jury must believe beyond a reasonable doubt that the defendant committed the offense.

NOTE: These levels of proof do not have to develop in sequence. If probable cause exists, there is no need for an officer to develop some other level of proof to justify an arrest, search, or warrant. If reasonable articulable suspicion exists, there is no need for an officer to develop some other level of proof to justify a stop and pat-down. If an officer witnesses a crime being committed, probable cause exists to make an immediate arrest.

4.1.8 Distinguish the standards of proof and understand totality of the circumstances

The different standards of proof described above are required for different procedures used by police officers in the field. Without meeting certain criteria, the actions we take may or may not be legally justified, so we must always be cognizant and respectful of the rights of all people regardless of the severity of circumstances or nature of offenses involved. The standards required for a contact, stop, search, and arrest all need to be known and understood for a police officer to be effective in the field. These standards are measured in court and must be viewed in the context of what is reasonable by an objective police officer under the same circumstances.

Reasonable Suspicion vs. Probable Cause

The US Supreme Court describes the difference between reasonable suspicion and probable cause as follows:

Reasonable suspicion is a less demanding standard than probable cause not only in the sense that reasonable suspicion can be established with information that is different in quantity and content than that required to establish probable cause, but also in the sense that reasonable suspicion can arise from information that is less reliable than that required to show probable cause.

Reasonable suspicion must be supported by specific and articulable facts and is considered a minimal level of justification for suspecting a person of engaging in criminal activity.

The specific and articulable facts to support probable cause must be more reliable. It is a set of facts, circumstances, or reliable information which would lead a reasonable, prudent, and cautious police officer to believe a crime has been committed, is being committed, or is about to be committed and that a certain person is responsible. This is a far more demanding standard in which the officer must evaluate the information cautiously, eliminate unreliable information, and reach a determination based on all of the facts, given all of the circumstances. A number of different factors surrounding the circumstances of each case will strengthen or weaken the level of proof at issue, and understanding and evaluating them constitutes a totality of the circumstances analysis.

Totality of the Circumstances

The totality of the circumstances is a legal concept involving the examination of all evidence and information available to the officer in an effort to make a decision, to the best of his or her ability, as to what exactly happened, who is involved, and whether there is enough proof (probable cause) to make an arrest, conduct a search, or obtain a warrant, or enough proof (reasonable suspicion) to conduct a stop or protective pat down. This includes examining and evaluating the sources of the information and the credibility of the sources when acting on a tip. Information should be corroborated as much as possible, especially when you do not have enough information about the source to evaluate its veracity or reliability, such as with the use of an informant. The totality of the circumstances is the product of an analysis of all the information obtained during the preliminary investigation. It involves the credibility of witnesses and complainants, as well as suspects, and dictates the decisions ultimately made by the officer handling a scene.

Example: An officer receives an anonymous call describing that a young black male wearing a plain blue shirt is at a particular bus stop with a handgun in his waistband. The officer arrives and sees a person specifically matching that description. What level of proof exists, and what action should be taken? Since the information in this lookout is general in nature, contains information anyone could discover, and the caller is anonymous, there is not enough information available to establish reasonable suspicion. The officer should therefore look for additional facts which may corroborate the anonymous call and observe the suspect without confronting him to see if he exhibits any indicators of someone who is armed, or if he commits any other offense for which the officer can conduct a stop or arrest. This example is based on an actual case, where the officer immediately approached the suspect, frisked him, and recovered a handgun without taking any steps to corroborate the tip. The U.S. Supreme Court ruled that the handgun was illegally seized and could not be used as evidence. (*Florida v. J.L.*)

Another example: An officer receives an anonymous tip that Vanessa White will, at a certain time, be leaving a certain address and heading towards a certain motel. It is also relayed that she will be driving a brown Plymouth station wagon and have some cocaine in a brown attaché case. Based on the tip, officers respond to the address and observe Ms. White leaving in the brown Plymouth. She drives a direct route towards the motel described in the call and is stopped a few blocks from the motel. After being informed that she was stopped for suspicion of transporting cocaine, Ms. White consents to a search of her vehicle and the officers recover marijuana from it. She is placed under arrest and a search of her purse uncovers a small quantity of cocaine. Were the officers' actions reasonable based on the anonymous tip? Did the officers establish the standards of proof necessary to justify the vehicle stop, search, and arrest? Yes, although the information came from an anonymous tip, the level of knowledge displayed by the caller was in much greater detail than it was in the previous scenario. Here, the caller not only knew easily

observable facts like the type of car and location involved, but also knew the time of departure and the driver's destination. The U.S. Supreme Court ruled that although it was a close call, based on the totality of the circumstances, the information provided by the caller qualified as reasonable suspicion to justify a stop of Ms. White. (*Alabama v. White*)

NOTE: When relying on anonymous tips, officers must ensure that the information is corroborated or based on detailed knowledge about the suspect and incident. Without the additional specific details provided in the second example, the anonymous tip involving information anyone could observe would not be enough to justify the vehicle stop, arrest, and search.

Evaluating Information:

The main issue in using information from a third party is determining its accuracy and validity. Officers must vet and corroborate the information as much as possible in order to make a practical, common-sense decision, given all the circumstances including the veracity, reliability, and basis for how the person acquired the information to determine whether it is valid. (*Illinois v. Gates*) According to the US Supreme Court, the following terms are all highly relevant elements. They are not entirely separate, but rather intertwined issues.

- **Veracity** means determining how truthful the person providing the information is.
- **Reliability** is determined by examining how accurate the information provided is.
- **Basis of knowledge:** This is the way in which the person came to acquire the information provided. Did they learn of it while witnessing the offense? Did they hear about it from someone else? Is the information detailed or vague?

Similar to developing standards of proof, determining the validity of the information cannot be done by applying any rigid set of rules, or by examining any single factor. Rather, the officer must look at the entire situation and all of the information received—the totality of the circumstances—to make a practical, common-sense determination.

There is no single deciding factor in establishing levels of proof, and the totality of the circumstances will dictate your decisions, which is why it is important to conduct thorough preliminary investigations and gather as much information as possible. The following factors comprise the totality of the circumstances analysis that courts take into consideration when determining the legality of an officer's actions:

- **Officer's own knowledge, training and experience**
Throughout your career with MPD you will have opportunities to receive training on a number of different topics and become familiar with the people and trends in your patrol service area. Experience and expertise give each officer a unique skill set to utilize while policing. Some officers may have training and experience in investigating certain types of offenses and recognize when a person's behavior is consistent with that type of offense. For example, an officer may witness people engaging in behavior consistent with that of drug sales, or witness that a person walking on the sidewalk pauses at each parked car to look inside which is consistent with someone who may be planning a theft from automobiles.

An officer's experience with certain individuals and knowledge of their criminal history may also be considered, though their criminal history alone does not justify a stop. For example, an officer observes a person who was recently convicted of theft from an automobile walking on the sidewalk past vehicles. This alone does not justify a stop, but if the person is observed to be

viewing the interior compartments and checking door handles on the vehicles, this behavior, combined with the officer's knowledge, would justify a stop of the person.

- **Person's Appearance**

A person's appearance alone does not justify a stop, but when coupled with circumstances surrounding an offense, a stop might be justified. Examples of this include a person's appearance matching the description of a suspect wanted for an offense, a person appearing to be under the influence of drugs or alcohol, a person suffering from an injury which may have been received in an assault, a person appearing to be winded from running, and a person appearing to be exceptionally nervous.

For example, if a lookout is broadcast for a white male, 18-25 years of age, wearing blue jeans and a white shirt, you may see numerous individuals fitting the description. As such, an officer should look for other factors as well, such as proximity to the offense location, whether the person appears nervous or winded, or whether the person is reasonably involved in some lawful activity. A stop near the time and place of the offense, in this case, could be justified. A stop solely based on the person's clothing an hour later would most likely not be justified.

- **Actions and Demeanor**

A person may be actively fleeing, hiding, or trying to conceal or destroy evidence. Or, a person may respond to questions with evasive, suspicious, incriminating, or contradictory answers. People may appear exceptionally nervous or display other signs that they may have been involved in unlawful behavior. These actions alone may or may not justify a stop but should always be considered within the totality of the circumstances.

Remember that, except in specific circumstances, community members are not required to answer any questions posed by a police officer. As such, silence alone does not justify a stop or arrest (remember the protection against self-incrimination and right to remain silent covered above). For example, on the scene of a call involving a drug complaint, you observe a group of men in front of the location of the call that may or may not be dealing drugs. You approach the group, identify yourself, and ask one of the men what they are doing and if they are selling drugs. He looks at you, says nothing, and walks away. Absent some other factor such as seeing a suspected drug sale or discarding contraband, there is no justification to conduct a stop of the man who walked away. If, instead, the man drops a clear zip lock bag (potential drugs or paraphernalia) to the ground and begins walking away, a stop would be reasonable because you have articulable facts on which to build the standard of proof and conduct the stop.

- **Time and place**

The time and place as it relates to a criminal offense is applicable to the justification of police action. A stop of a community member is more reasonable the closer in time and place it occurs to the associated offense. Furthermore, certain types of crimes are more likely to occur at certain times of day or night and certain locations that officers become familiar with in their respective patrol districts.

For example, around closing time in the early morning, in areas with a high volume of nightclubs, a higher than usual rate of robberies may be experienced. Knowing this trend, you can apply it to the totality of the circumstances when building the standard of proof necessary to conduct stops in that area. If prior early morning robberies involved a group of two or three males 18-25 years

old wearing black hooded sweatshirts and blue jeans working together, conducting a stop of one person wearing those items of clothing during the daytime would not be reasonable. However, at closing time, in the vicinity of the night clubs, along with other factors, reasonable suspicion can more easily be developed with this knowledge of the crime trend.

- **Information or information plus corroboration provided by a reliable third party**

The information used in developing the standards of proof does not have to be gathered by just one officer conducting the investigation or the stop. Information from various sources is also applicable, but needs to be measured for accuracy and veracity, and corroborated whenever it is possible. For instance, information from a third party is often used in developing the standards of proof. The third party can be another police officer, officers from other jurisdictions, community members, or paid informants.

Information from other law enforcement agencies is shared with MPD on a regular basis, and MPD officers can make arrests and stops based on this information when valid warrants are issued and thorough lookouts are provided. Lookouts, teletypes, and wanted posters can justify the stop of a community member when a description of the suspect, the underlying offense, and type of police action requested is included in the message.

For example, the sergeant conducting roll call distributes wanted posters from the Alexandria Police Department containing a picture of John Smith along with a physical description and indicates that he is wanted on an outstanding warrant for failing to register as a violent sexual offender. If you observe someone who resembles Smith, can you conduct a stop based on the wanted poster? Yes, as long as that person objectively matches the description, the wanted poster indicating the existence of a warrant can justify a stop. Furthermore, if the person is identified during the stop as Smith, he will be arrested after the officer confirms that the warrant is valid and active. A copy of the wanted poster should be attached to the arrest paperwork submitted to the US Attorney's Office.

4.1.9 Identify the importance of precedent in criminal law

The Latin legal concept "*stare decisis*," meaning "to stand by things decided," is the process of looking to prior court decisions to guide present decisions. Issues previously brought to court and the resultant legal decisions that have been made set a precedent for the courts to use in future cases. Precedent is generally adhered to by the courts, so as to provide predictability and consistency. The concept of precedent also serves to ensure equality to all persons under the law, in that persons involved in similar situations will be treated alike.

A great deal of officers' decision-making in the performance of their duties will be dictated by policies in place that limit or restrict an officer's authority in light of precedent, those court decisions that affect the way in which law enforcement officers conduct their investigations. Most MPD policies are a result of court rulings and must be adhered to by members to avoid violating the rights of community members which have been guaranteed by the US Constitution and determined by courts. A good example of a precedent that affects the everyday thought process of a patrol officer is *Brinegar v. US*, which established the standard of proof need to establish probable cause for an arrest.

4.1.10 Apply a legal brief of a court case to police practices

Brinegar v. United States, 338 U.S. 160 (1949)

In class, we will review and discuss the US Supreme Court ruling in this case. We will discuss how the decision affects the everyday practices of police officers and police policies in terms of the following:

- Did probable cause exist to arrest Brinegar?
- Did probable cause exist to search the vehicle and seize the liquor?
- If so, at what point was the standard or proof for probable cause met?
- What was the Supreme Court's reasoning that supports its ruling about probable cause?
- What does the Supreme Court decision mean for police officers and the need to establish probable cause in the future?

4.1.11 Justify different police-community member interactions and the categories of police powers

Investigative Powers

Officers in the field conduct investigations into a wide variety of incidents and offenses. As such, their authority, although strictly limited and defined, allows different measures to be taken based upon the level of proof that is present. While conducting an investigation, officers often conduct **contacts, stops, protective pat downs, and questioning** of persons involved.

Contact: Contacts are face-to-face communications with individual community members under circumstances in which the community member is free to not respond and is free to leave. During a contact, the community member is not detained in any way. There is no need to meet any standard of proof to conduct a contact.

Conduct during Contacts:

- Persons contacted may not be detained in any manner against their will, nor patted down. An officer may not use force or coercion to require a community member to stop or respond.
- Persons cannot be required to answer the officer's questions or to respond in any way to the officer if they choose not to do so. Any information received during the contact must be voluntarily provided. Officers should avoid asking questions or making a request which could be misunderstood as commands. Requests should be made with language that communications that the person has an option, such as "may you" or "would you mind," to make it clear that the person is not receiving a lawful order.
- Officers must constantly keep in mind that the distinction between a contact and a stop depends on whether, under the particular circumstances, a community member could reasonably perceive that they are not free to leave the officer's presence. Therefore, since the individual may be, and is presumed to be innocent of wrongdoing of any kind, officers should take special care to act in as restrained and courteous a manner as possible.
- The duration of a contact should be as brief as possible, unless such ease and rapport exists that the community member wishes to continue interacting.
- When asked, officers during a contact must advise community members of their right to refuse the interaction as well as their right to leave. If community members refuse to interact or cease to cooperate during a contact, they must be permitted to leave. Refusal to cooperate does not justify a stop or arrest.

- Generally, individuals are not required to possess or carry with them any form of identification or be required to account for their presence on public space. No demands for identification should be made.

Stop

While conducting investigations, officers have the authority to conduct stops of community members when reasonable suspicion exists to believe that the suspect is involved in criminal activity. Stops are defined as “the temporary detention of a person for the purpose of determining whether probable cause exists to arrest that person.” As noted above, an officer must have reasonable suspicion and articulable facts about the suspect and the circumstances to justify the stop as it does involve the detention of a person for investigative purposes. Unlike a contact, when a stop is conducted, the suspect is not free to leave and officers are authorized to use force, when necessary, to conduct the stop.

Conduct during Stops

- An individual may be stopped at or near the origination of the stop for a reasonable period of time. When a stop occurs over an extended period of time, officers shall articulate the justification for the length of the stop in a records management system (RMS) report.
- Officers conducting a stop should only detain the person for the length of time necessary to obtain or verify the person’s identity, to question the person’s presence or conduct, and to determine if the person is to be arrested or not. The length of a stop must be reasonable, and caution dictates that it should not last any longer than necessary to avoid it becoming an arrest.
- Although justified in briefly detaining an individual and compelling him or her to perform certain actions, officers must act with restraint and courtesy while conducting all stops, and must identify themselves as police officers.
- Officers are required at some point during every stop, to provide an explanation to the person as to the reason and purpose of the stop. Being the subject of a stop can be very unsettling. Providing an explanation can potentially deescalate the situation, gain cooperation, and reinforce the legitimacy of our actions as police officers. However, while all stopped individuals must be provided with a general explanation of the purpose of the stop before they are released, officers are not required to provide specific details, such as detailed lookout information, as that may jeopardize an investigation.
- Officers may question persons during a stop, to include obtaining the person’s identity. Persons being detained, however, shall not be compelled to answer questions or produce identification for the officer. Refusal to answer questions and/or identify oneself does not meet the standard of proof for probable cause to arrest. However, such refusal does contribute to the totality of the circumstances and should be taken into consideration by officers conducting the investigation.
- Officers shall use the least coercive means necessary to effect a stop. This includes verbal requests, lawful orders, and the use of physical force when necessary.
- Officers who reasonably believe that a person in the vicinity of a crime of violence has knowledge of value to the investigation, such as an eyewitness, may order the person to stop. The very brief stop is only to obtain identification and information about the current situation. As already noted, however, witnesses shall not be compelled to answer any questions or produce identification for an officer.
- All stops must be documented on an incident report.

Protective Pat Down

During a justified and reasonable stop, a protective pat down, also known as a frisk, of the suspect may be conducted if the officer has reasonable articulable suspicion to believe that the subject is armed. This is done specifically to detect weapons and other dangerous instruments and to neutralize the threat of physical harm. Pat downs are not meant to discover any other evidence or incriminating material. Reasonable suspicion to conduct a stop does not automatically justify reasonable suspicion to conduct a protective pat down.

Some common factors that are considered in determining if reasonable suspicion exists to conduct a protective pat down include:

- **The individual's physical characteristics:** A stopped person's clothing may bulge in a manner suggesting the presence of a weapon, such as a firearm tucked into a waistband. Physical demeanor, like how a person is standing or slouching, may also suggest that the person may be carrying a weapon.
- **The individual's actions:** A stopped person may have made a movement as if to hide a weapon when approached, may appear nervous, may make threats, or may blade their body in such a way that leads you to believe the person is armed.
- **Prior knowledge about the individual:** The officer may be familiar with an individual and know that the person has been arrested for possessing weapons in the past, is known to carry a weapon, or is known to be violent.

Protective pat downs shall be conducted in the following manner:

- The pat down should begin at the area of a person's body or clothing which the officer believes is most likely to contain a concealed weapon, such as a waistband or coat pocket.
- Officers should not reach into pockets or clothing. Rather, the officer should touch the outside of pockets or clothing to feel for what may be a weapon concealed beneath or inside. If such an instrument is detected, reaching into the pocket to remove is then justified.
- Outer clothing such as overcoats and jackets may be opened to allow a pat down of shirts or trousers, when necessary.
- Bags that may contain weapons can be separated from the persons carrying them. In these cases, taking possession of the bag so that it is not accessible to the stopped person is sufficient to eliminate the danger, and a search of its contents is not necessary.
- Other items of property detected during a pat down which are not weapons are not to be removed or seized.
- If during a pat down the officer feels an object and believes that it might be a weapon that could be used to harm him or her or others, the officer is authorized to take whatever action is necessary to examine the object and secure it for the duration of the stop.
- If while retrieving an object that the officer believes might be a weapon the officer discovers contraband, paraphernalia, or evidence of a crime, the officer may seize it and use it as evidence.

All stops shall be documented in an incident report per the NEAR ACT as covered later in this lesson. Members shall be mindful of these reporting requirements when conducting stops so they are able to document all required information during the completion of their RMS reports. (GO 304.10 and 3.1 – Report Writing).

The term “stop and frisk” is commonly used to describe a protective pat down encounter. Still, it is important to remember that not all stops involve a frisk (protective pat down). As a reminder, the pat down requires its own justification through articulable facts that give the officer a reason to believe that the suspect may be armed. Pat downs of suspects are also called “Terry Stops” after the legal case that defined them. (*Terry v Ohio*)

***Terry v. Ohio*, 392 U.S. 1 (1968)**

Language from the US Supreme Court’s decision indicates that:

- “When an officer is justified in believing that an individual whose suspicious behavior he is investigating at close range is armed and presently dangerous to the officer or others, it would appear to be clearly unreasonable to deny the officer the power to take necessary measures to determine whether the person is, in fact, carrying a weapon and to neutralize the threat of physical harm.”
- The officer “confined his search to what was minimally necessary to learn whether the men were armed and to disarm them once he discovered the weapons. He did not conduct a general exploratory search for whatever evidence of criminal activity he might find.
- “At the time he seized petitioner and search him for weapons, Officer McFadden had reasonable grounds to believe that petitioner was armed and dangerous, and it was necessary for the protection of himself and others to take swift measures to discover the true facts and neutralize the threat of harm if it materialized.
- “Our evaluation of the proper balance that has to be struck in this type of case leads us to conclude that there must be a narrowly drawn authority to permit a reasonable search for weapons for the protection of the police officer, where he has reason to believe that he is dealing with an armed and dangerous individual, regardless of whether he has probable cause to arrest the individual for a crime.”

An officer must have reasonable articulable suspicion to believe a person has engaged in, is engaged in, or is about to engage in criminal activity, *and* reasonable articulable suspicion to believe the person is armed and potentially dangerous, to perform a Terry pat-down.

Questioning

While conducting your investigation and handling calls for service, incorporating a thorough line of questioning is very effective. Questioning is a crucial skill for officers in the field. Building rapport with persons during a contact or stop is valuable for effective questioning but remember that persons in both forms of interaction do not have to answer your questions. General questioning of everyone present at a crime scene to determine what has happened, and who the suspect may be is reasonable. Questioning is conducted for a number of reasons but is primarily done to obtain and corroborate information from people with different forms of involvement in the offense including complainants, witnesses, and suspects.

Arrest Powers

As a result of police investigations, when probable cause exists, officers make arrests of suspects and obtain arrest warrants so suspects can be prosecuted in the court system.

Use of force

When necessary, officers are authorized to use physical force in affecting the arrest of suspects. The force used is to be the minimal and reasonable amount necessary based on the suspect's level of resistance.

Search

Probable cause is the same standard of proof required to conduct a search and apply for a search warrant. Searches differ from pat downs in many ways and are not only conducted to detect weapons. Searches of suspects and their surroundings can be conducted when consent is voluntarily granted to the officer by the suspect. Searches of suspects can also be conducted when it is incident to a lawful arrest. Arrestees are always searched incident to arrest and prior to being transported to an MPD facility for processing. This practice is in place for the safety of officers and prisoners, as arrestees become our responsibility once in out custody. No prisoner is allowed to keep any weapons or illegal devices or substances on their person after being arrested. (More training and information will be provided in Blocks 8 and 10 when case law and searches are discussed.)

Exercise seizure and restraint

All arrests involve some level of restraint whether you are required to use force to take the person into custody or the person submits to the arrest without you having to employ force. Furthermore, an arrest is the seizure and detention of a person. When the person becomes restrained in such a way that they are no longer free to leave, move, or act as one is normally and freely able to do, he or she has been seized by the arresting officer. For example, handcuffing an arrestee and moving the arrestee to a transport vehicle and police facility involves restraint and a seizure of that person. A reasonable person would understand that they are under arrest under these conditions regardless of what the officer does or does not say regarding an arrest.

4.1.12 Define Arrest

There are four elements that need to be present for an arrest to occur. Note that these elements do not address the legality of the arrest, just whether an arrest has factually occurred.

1. **Authority to Arrest:** For an arrest to be lawful, the officer must have the legal authority to make an arrest and the arrest must be based on legal authority, such as a warrant or when an offense is committed in the officer's presence.
2. **Intention to Arrest:** There must be intent on the part of the officer to arrest a person. This element and how that intent is demonstrated is gauged by how a reasonable person would feel based on the totality of the circumstances. Words alone do not constitute an arrest. The officer's intent must be communicated in such a way that a reasonable person under the circumstances would believe that they are not free to go and that they are under arrest.
3. **Seizure and Detention:** The physical taking of someone into custody; a seizing and detention of a person that effectively deprives him or her of their liberty, with or without force, must occur. Words alone do not constitute an arrest, rather the physical restraint and custody conveys the officer's intent to arrest.
4. **The Individual Understands:** Persons being arrested must have some understanding that they are under arrest. This can be as simple as saying "you are under arrest," but that does not necessarily have to be the case, and those words are not required to be said for an arrest to occur.

Actions strongly imply that a person is being arrested, with or without an explicit statement to the arrestee about his or her custodial status. For example, if an officer handcuffs a person, conducts a pat down, and places the individual in the back seat of a transport vehicle, a reasonable person would presume that he or she is under arrest with or without being told by an officer. In this situation, the person is not free to leave and has been significantly limited in his or her ordinary freedom. Under other circumstances, the same actions may be taken without an arrest occurring, such as with an overly aggressive or violent person who may be under the influence of drugs. Such a person is handcuffed for safety purposes or placed in a vehicle to keep the person out of extreme cold, heat, or otherwise dangerous weather. These actions would be reasonable without constituting an arrest but it should always be clearly explained to the person who may otherwise feel that he or she has been arrested.

The element of understanding is not required for arrests involving the following circumstances:

- If the suspect/arrestee is under the influence of drugs or alcohol and is unable to understand what is happening.
- If the suspect/arrestee is mentally unstable.
- If the suspect/arrestee is unconscious.

4.1.13 Identify the four elements of a lawful arrest

Once an arrest has been determined to have actually occurred, there are four factors that need to be examined to determine if the arrest was lawful.

1. **Lawful Authority:** The arrest was made by a sworn police officer with arrest powers, which is the statutory authority to make arrests. The officer should identify him or herself so that the arrestee is aware of this lawful authority, and the officer should be displaying a badge, name tag, ID card, or police uniform.
2. **Lawful Place:** The arrest must be made in the geographic jurisdiction of the arresting officer. MPD has the authority to make arrests nearly everywhere in the city. The exceptions to this are:
 - Arrests generally should not be made in a courtroom. In the case of an offense occurring in a courtroom, the officer is required to receive advance permission from the judge to make the arrest.
 - Foreign embassies are technically foreign territory where MPD officers lack jurisdiction so officers are not to make arrests on those properties unless such action is requested by an official from the embassy.
 - Officers have no authority to make arrests or continue pursuit onto a military installation. If a pursuit must continue, proper authority to do so should be requested at the entry gate of the military installation. Serving warrants and summons on military bases should be done with the assistance of military police officers from that base.
 - In public buildings and military bases, members should notify the special police officers or military police assigned to the area of any intent to arrest someone on the property, request their assistance as they are familiar with the property and access to different areas of the building/base which minimizes the chance of escape and confrontation.
3. **Lawful Time:** MPD is authorized to make arrests at any time of the day or night, but officers are prohibited from deliberately serving misdemeanor arrest warrants during early morning or late-night hours. However, if at any time an officer encounters a wanted person, the officer is required

to make the arrest. For example, officers shall not respond to the last known addresses of persons wanted for misdemeanor arrest warrants at 2:00 AM for the purpose of serving warrants. On the other hand, if you were dispatched for a radio run at 2:00 AM and one of the involved persons is found to have an outstanding misdemeanor warrant, the arrest shall be made.

4. **Lawful Reason:** The standard of proof for arrests is probable cause. However, in some cases, even when probable cause exists, an officer is required to apply for and obtain an arrest warrant in lieu of making a field arrest. The Department has clearly defined the circumstances in which arrests can be made without a warrant, and those in which a warrant must be obtained. With knowledge of an outstanding arrest warrant for the suspect, an arrest is always authorized, and officers do not need a physical warrant in their possession to make an arrest based on a warrant.

4.1.14 Identify the circumstances when an arrest may be made without a warrant

When probable cause exists, officers shall apply for and obtain an arrest warrant for the suspect in all cases except the following. Under these circumstances, officers may make a field arrest on the scene:

- Any crime which was committed in the officer's presence and witnessed by the officer.
- Any felony case in which probable cause exists to believe the offense occurred and the suspect committed it.
- Any offense in which probable cause exists and a domestic relationship between the victim and suspect is present.
- At the request of any Washington Humane Society Officer who has witnessed a violation of laws for the prevention of animal cruelty.
- Any of the designated **probable cause misdemeanors**.

4.1.15 Define probable cause misdemeanors

The probable cause misdemeanors are listed below. There are twenty-six (26) misdemeanor offenses for which officers can make a field arrest when probable cause exists and one of three specific criteria are met, or when the crime is committed in your presence. All other misdemeanor offenses not committed in your presence require an arrest warrant.

1. Simple Assault § 22-404
2. Unlawful Entry §3302
3. Destruction of Property § 22-303
4. Voyeurism § 22-3531
5. Theft II § 22-3211
6. Receiving Stolen Property § 22-3232
7. Shoplifting § 22-3213
8. Attempt Theft I § 22-3211
9. Attempt Unauthorized Use of a Vehicle § 22-3215
10. Unauthorized Disposal of Solid Waste § 8-902
11. Illegal Construction § 113.7

12. Reckless Driving § 50-2201.04
13. Leaving After Colliding § 50-2201.05c
14. DUI/OWI § 50-2206.11 and § 50-2206.14, respectively
15. Operating After Suspension or Revocation § 50-1403.01
16. Illegal Panhandling §22-2301
17. Defacing Public or Private Property §22-3312.01
18. Defacing or Burning a Cross or religious Symbol; Display of Certain Emblems §22-3312.02
19. Unlawful Entry of a Motor Vehicle § 22-1341
20. Tampering with a Detection Device §22-1211
21. Engaging in an Unlawful Protest Targeting a Residence §22-2752
22. Misdemeanor Sexual Abuse §22-3006
23. Misdemeanor Sexual Abuse of a Child or Minor §22-3010.01
24. Lewd, Indecent or Obscene Acts or Sexual Proposal to a Minor §22-1312
25. Stalking §22-3133
26. Misrepresentation of Age §25-1002

4.1.16 Identify the three criteria required to make an arrest based on a probable cause misdemeanor

All of the above listed probable cause misdemeanors require the obtaining of an arrest warrant in lieu of making a field arrest, unless one of the three conditions listed below are met:

1. **Unless immediately arrested, the accused may not be apprehended:** For example, if the suspect is a known flight risk, has no fixed address, uses aliases and other identities, etc., it is possible that he or she may not be apprehended on a warrant and can be arrested in the field upon probable cause.
2. **The accused may cause injury to others:** In cases of assault or persons with known violent tendencies, to avoid the possibility of additional assaults or injuries to others a field arrest can be made upon probable cause. For example, if two intoxicated friends engage in an argument over a sporting event and one attacks the other by punching him in the face and chest, a simple assault has occurred. If probable cause exists to make the arrest and the suspect is still apparently angry and violent, it would be lawful to make a field arrest based upon probable cause. This is because not doing so may result in injuries to others or more injuries to the victim because of the suspect's current state of impairment and demonstrated violence.
3. **The accused may dispose of, tamper with, or destroy evidence:** In cases involving circumstances in which evidence may be tampered with or destroyed, or circumstances in which evidence cannot be seized or documented, a field arrest based upon probable cause can be made. For example, if probable cause exists to make an arrest for DUI or DWI, the evidence of the offense (suspect's blood alcohol level) will naturally diminish over the course of time. In such a case, a field arrest based upon probable cause can be made.

4.1.17 Define the arrest authority of individuals other than sworn police officers

There are circumstances where people other than sworn law enforcement officers can make arrests in Washington, DC:

1. **Special Police Officers:** Special police officers (SPOs) have arrest powers while on duty and on the property which they have been hired to patrol. SPOs also have arrest powers while off the property if in fresh pursuit. When off duty or otherwise off the property, SPOs do not have the arrest authority granted to sworn members.
2. **Community Members** do not have arrest powers but can voluntarily detain a person who has committed a felony or probable cause misdemeanor until police arrive. Community members can also legally assist a sworn police officer or SPO in making an arrest when the need arises.

4.1.18 Identify the Stop or Contact Report

D.C. Act 21-356 “Neighborhood Engagement Achieves Results Amendment Act of 2016” (NEAR Act), D.C. Official Code § 5-113, requires information collection specific to police stops and protective pat downs. Members shall be mindful of these reporting requirements when conducting stops in such a way that they are able to document all required information during the completion of their RMS reports. Members shall maintain records of all stops consistent with the rules outlined in this lesson.

A. For the purposes of NEAR Act data collection and GO 304.10:

1. All arrests are also considered stops.
2. NEAR Act data collection requirements apply to all stopped individuals. Members shall fully document each individual stopped.
3. Required documentation varies by the circumstances of the stop.
 - a. Stops that are resolved using a Notice of Infraction (NOI) are referred to as “NOI stops.” This also includes stops resulting in notices of violation (NOV).
 - b. All other stops shall be referred to as “stops”.

B. The “field contact” card [PD Form 76 (Contact Card)] (*internal document only*) shall not be used to document stops of any kind.

C. All NOI stops shall be documented according to the following procedures.

1. All NOI stops shall be conducted by body-worn camera (BWC)-equipped members. In cases where the serious nature of an offense justifies a member not equipped with a BWC to conduct the stop, he or she shall request that a BWC-equipped member respond to the scene. In such cases, the member conducting the stop shall also record the details of the stop, including a justification of the circumstances, in RMS.

2. For the purposes of documenting stopped individuals' gender, race, ethnicity, and date of birth, members shall conduct a direct inquiry by stating, "Per the NEAR Act, as passed by the Council of the District of Columbia, we are required to ask for your gender, race, ethnicity, and date of birth." Members shall record the demographic information as reported by the stopped individual.
3. All NOI stops resolved with a warning, where no other law enforcement action was taken, shall be documented by issuing a warning NOI or NOV as appropriate.
 - a. Verbal warnings shall not be issued. Pursuant to GO-SPT-303.01 (Traffic Enforcement), verbal warnings shall only be given under extreme circumstances (e.g., receipt of a radio assignment requiring immediate response, motorist was en route to a hospital for emergency treatment of a sick or injured passenger). In the GO-OPS-304.10 (Field Contacts, Stops, and Protective Pat Downs) Attachment B Documenting Stops Page 3 of 8 July 9, 2019 occasion that a verbal warning is issued, members shall document the details of the stop, including a justification of the extreme circumstances, in RMS using an "incident" card.
 - b. When issuing the warning NOI, members shall indicate the reason for the stop by stating, "You were stopped because (specific violation indicated here)".
4. All NOI stops resulting only in issuance of an NOI, where no other law enforcement action was taken, shall be documented solely through issuance of the NOI.
 - a. Members shall indicate the reason for the stop by stating, "You were stopped because (specific violation indicated here)" and document the reason for the stop on the NOI in the "RFS Code" field. One RFS Code shall be selected and based upon the reason that the stop originated, regardless of any other outcomes of the stop.
 - b. Members shall indicate the approximate duration of the stop on the NOI in the "Approx. Duration of stop" field. Stop duration is approximate and measured in minutes; only covering the time in which the actual stop took place (e.g., not time spent on field contacts, arrests, or booking).
5. All stops resulting only in the issuance of an NOV, where no other law enforcement action was taken, shall be documented solely through issuance of the NOV using the "Notes" section as indicated below. Members shall submit a scanned copy of the NOV to the Strategic Change Division Adminbox.

D. All stops shall be documented according to the following procedures.

1. All stops regardless of the outcome of the event require a Central Complaint Number (CCN). For each event, members shall select "Yes" in response to "Was a Stop Involved?" to indicate that a stop occurred. This selection prompts all data collection fields necessary to document stops. RMS fields capture stop data requirements as indicated in this attachment.

2. Members shall be mindful of the time that subjects are no longer considered stopped. The stop ends when the subject is either free to leave or probable cause has been established for an arrest. Stop duration shall be captured for each individual who is stopped and is approximate and measured in minutes; only covering the time in which the actual stop took place (e.g., not time spent on field contacts, arrests, or booking).
3. Reports involving stops shall be properly classified and list at least one selection from the “What was the reason for the stop?” field.
4. NEAR Act data collection requirements apply to all stopped individuals. Members shall fully document each individual stopped using a person card.
 - a. For the purposes of documenting stopped individuals’ gender, race, ethnicity, and date of birth, members shall conduct a direct inquiry by stating, “Per the NEAR Act, as passed by the Council of the District of Columbia, we are required to ask for your gender, race, ethnicity, and date of birth.” Members shall record the demographic information as reported by the stopped individual.
 - b. Members may document individuals who were present during the stop but not considered stopped using the “witness” person card.

4.1.19 Complete a Stop and Protective Pat Down Report

Documenting Pat Downs and Searches (GO 304.10)

- a. When documenting searches in RMS, members shall differentiate between searches that occur as a result of a stop and searches that result from an arrest. Searches occurring during the stop shall be documented by selecting “Yes” in response to one or both of these questions:
 - 1) “Was this PERSON patted down and/or searched as a result of the stop (prior to arrest)?”
 - 2) “Was this person’s PROPERTY patted down and/or searched as a result of the stop (prior to arrest)?”
- b. Multiple searches can be entered on each type of search by selecting “+ Search Type.”
- c. Post-arrest searches are not subject to NEAR Act requirements and shall be documented in the “arrest” card.

SUMMARY

As an officer, it is imperative that you become familiar with the Fourth Amendment and its purpose of protecting community members from unreasonable searches and seizures. Understanding legal concepts like the standards of proof for a stop, pat down, and arrest, as well as the totality of the circumstances for

determining when a standard of proof has been met is vital for operating as an MPD officer. As an officer, knowing and understanding the various criminal laws and concepts covered in this lesson will not only guide you in the field, but will reduce the possibility of civil liability.