

**TOPEKA POLICE DEPARTMENT POLICY AND PROCEDURE MANUAL**  
**4.1 INVESTIGATIVE PROCEDURE: CONSTITUTIONAL LAW**

<b>SUBJECT: Investigative Procedure: Constitutional Law</b>		
<b>4.1</b>	<b>EFFECTIVE:</b> 08-31-2020	<i>William Cochran</i>  William Cochran, Chief of Police
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**4.1.1 PURPOSE**

This order establishes rules and guidelines for the lawful and appropriate use of search and seizure, interview and interrogation and eyewitness suspect identification.

**4.1.2 POLICY**

All search and seizure, interview and interrogation and eyewitness suspect identification procedures shall be strictly conformed to the law and to this order.

**4.1.3 DISCUSSION**

A. Adherence to Law

Investigative procedures and associated uses of police authority often implicate individual rights protected by the federal Constitution. In order to investigate effectively and lawfully, officers must understand federal constitutional law as it bears on the relationship between police authority and individual rights, particularly in certain critical situations. This Order explains many of those relationships and situations.

B. State Law Considerations

The Department enforces laws and exercises police authority derived primarily from state law. While this order is written largely in terms of federal Constitutional law, state statutory and Kansas Constitutional law sometimes impose greater restrictions on police authority than are imposed by the federal Constitution. It is the responsibility of individual officers and their supervisors to learn and obey applicable state law. Specifically, Department supervisors and managers are hereby charged with the responsibility of ensuring that their subordinates know and understand the provisions and/or requirements of applicable state law. If applicable state law is more restrictive of police authority than is the federal Constitution, state law shall control and be obeyed.

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C. Training

This order covers a number of subjects that have been dealt with in recruit basic and annual in-service training presented to Department employees over a period of years. Any past training that is inconsistent with this order shall be disregarded. In the event that any officer believes that any on-going Departmental training is inconsistent with this order, that officer shall immediately report such belief to his or her immediate supervisor, who shall ensure that the Department's training officer is informed promptly of the concern.

**4.1.4 INVESTIGATIVE CONTACTS/SEIZURES OF PERSONS**

There are four recognized types of encounters between police and citizens: voluntary encounters, investigatory detentions, public safety stops and arrests. Voluntary encounters are not considered seizures within the meaning of the Fourth Amendment.

A. Voluntary Contact

An encounter between a citizen and a law enforcement officer is considered voluntary as long as a reasonable person would feel free to decline the officer's requests for information or otherwise terminate the encounter. A voluntary encounter is not considered a seizure and does not require the officer to have reasonable suspicion of criminal activity.

A voluntary contact can be a highly effective investigative tool and is unlikely to cause evidence suppression and/or civil liability. Therefore, it is the preferred form of contact, where circumstances permit.

Note: An officer's retention of an individual's identification during a voluntary contact can transform the encounter into an investigatory detention requiring reasonable suspicion of criminal activity.

Employees and volunteers will verbally identify themselves when contacting a citizen via the telephone.

B. Investigative Detention(s) ("Terry Stops")

Investigative detention(s) may be conducted only if there is (at least) reasonable suspicion of criminal activity on the part of the person(s) to be detained. During an investigative detention, an officer may inquire about the suspect's name, address and an explanation of their actions.

When a suspect has been stopped for questioning under an investigative detention, the officer may frisk the person for firearms or other dangerous weapons if the officer reasonably suspects that the officer's safety requires it.

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1. Use of force and/or restraints is permitted only if reasonably necessary to maintain safety during an investigative detention. Excessive force is prohibited.
2. Involuntary movement of a detained person from one place to another is prohibited except for short distances reasonably necessary for safety and/or security. Generally, such movement will be permitted only within one locale, or area and may not involve transportation in a vehicle.
3. Note: If a detained person is willing to move voluntarily, or if there exists probable cause to arrest the detained person, movement is permitted.
4. Investigative detentions shall be limited in duration to a reasonably brief period of active and diligent investigation.

#### **C. Public Safety Stops**

In addition to the detection and investigation of criminal activity, police officers also have a legitimate role as a public servant to assist those in distress and to maintain and foster public safety. The public safety stop, also referred to as the community caretaking function, is totally divorced from the detection, investigation, or acquisition of evidence. However, because this type of encounter is considered a seizure under the Fourth Amendment, the safety reasons and exigent circumstances justifying the stop must be based on specific and articulable facts.

#### **D. Arrests**

Arrests shall be made only if there is probable cause to believe that the person to be arrested has committed a crime for which the officer has authority to arrest. Searches, processing of arrestees, and charging procedures shall be in accordance with general orders, training and applicable state law.

##### **Discontinuation of Arrest Custody**

1. If, following arrest but before commitment to jail custody, probable cause to arrest evaporates (because of new information or realization of an error), the officer shall release the arrestee as quickly as possible in a reasonably safe place (of the arrestee's choosing, if possible). In such cases, the officer shall document the arrest (and reasons for it), as well as the release from custody (and reasons for it), and shall also notify a supervisor of those transactions as quickly as possible.
2. If, after commitment of an arrestee to jail custody, an officer discovers new information (and/or realizes an error) which causes probable cause to evaporate, the officer shall immediately consult with a supervisor and with the appropriate prosecutor's office in order to determine the procedure for causing the release of the arrestee. Thereafter, the officer and supervisor shall proceed diligently in an effort to effect promptly (through lawful process) the release of the arrestee from custody. This shall be documented on a report and placed in the case file.

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#### E. Juveniles

Juveniles shall be seized and handled only as is permitted by applicable state law, general orders and the Kansas Juvenile Justice Code, KSA 38- 2301 *et. seq.*

#### F. Field Interviews

1. Field interview processes must conform to the law that applies to all officer-citizen contacts, as explained above. The desire or sense of need to complete a field interview report does not by itself justify a stop or detention. Officers may stop (detain) individuals for the purpose of conducting a field interview only when there is reasonable suspicion of the subject's criminal involvement. Factors which may contribute to reasonable suspicion include:
  - a. The actions of the suspect suggest his or her involvement in criminal activity;
  - b. The hour of day or night is inappropriate for the suspect's presence in the area. However, there is no hour so late or "inappropriate" that a person can be detained solely for walking or driving on a public corridor designed for such use, unless there is a curfew violation;
  - c. The suspect's location is inappropriate and criminally suspicious;
  - d. The suspect is carrying a suspicious object;
  - e. The suspect's location is proximate in time and place to a crime just committed or to a pattern of crimes that have occurred recently.
2. The following guidelines apply generally to investigative stops and shall be followed when making an authorized stop to conduct a field interview:
  - a. When approaching the suspect, officers shall clearly identify themselves as a law enforcement officer, if not in uniform, by announcing their identity and displaying Departmental identification;
  - b. Officers shall attempt to be courteous at all times during the contact but maintain caution and vigilance for furtive movements to retrieve weapons, conceal or discard contraband, or other suspicious actions;
  - c. Before approaching more than one suspect, individual officers should determine whether the circumstances warrant a request for backup assistance and whether the contact can and should be delayed until such assistance arrives;
  - d. Officers shall confine their questions to those concerning the suspect's identity, place of residence and other inquiries necessary to resolve the officer's suspicions. However, in no instance shall an officer detain a suspect longer than is reasonably necessary to make these limited inquiries; and
  - e. Suspects are not required to answer any questions posed during field interviews and cannot be compelled to do so. Failure to respond to an officer's inquiries is not, in and of itself, sufficient grounds to make an

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arrest although it may be cause for additional observation and investigation.

3. Nothing in this subsection precludes an officer from using a voluntary contact to conduct a field interview and use of that method is encouraged even when reasonable suspicion exists, unless it adversely affects officer or public safety.

#### **G. Knock & Talk Interviews**

From a legal standpoint, “Knock and Talk” is nothing more than going to someone’s residence and requesting consent to stay there and/or enter and converse with the subject. Ordinary rules of search, seizure, interview and interrogation apply. Officers who conduct knock and talk interviews shall:

1. Ensure that there is a second officer present when possible and applicable;
2. Enter a subject’s residence during a knock and talk only with consent;
3. Remain within the scope of consent;
4. Use a body worn camera (BWC) and/or audio recorder to document the conversation, when practical; and
5. Understand that the subject cannot be compelled to answer any questions that the contact is based on voluntary consent and that consent to enter and/or talk may be revoked at any time.

#### **H. Reporting of Field Interviews and Knock and Talk Activity**

1. If information is gained that is useful to others in the Department or which requires reporting, officers shall complete required reports and forms to assure appropriate dissemination of information gained.
2. All knock and talk interviews shall be documented in an offense report, incident report, community contact report, supplemental report or run sheet, including the reason (basis) for the initiation of the transaction.

### **4.1.5 INTERROGATION PROCEDURE**

#### **A. Voluntariness**

- a. Threats, intimidation, physical abuse and/or deprivation, promises of reward, and other similar coercions are prohibited in connection with interrogation.
- b. The duration of a custodial interrogation must be reasonable when evaluated under the totality of the circumstances of the particular case or transaction. Prolonged interrogations without breaks are prohibited. Reasonable opportunity to satisfy bodily functions must be provided. If appropriate because of the length of the interview or interrogation, food and drink may be provided.

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**B. Custodial Interrogation in General**

1. Questioning is “interrogation,” when officers’ words or actions are likely to elicit a self-incriminating response from the subject.
2. Interrogation is “custodial” when the subject has been formally or otherwise arrested or has been subjected to those restraints normally associated with arrest, such as being handcuffed and/or locked in the back of a police car.
3. Interrogation conducted during a normal traffic or pedestrian stop and brief detention is not “custodial” in the sense of Miranda law and does not require prior Miranda warnings.
4. The use of force or use of restraints can transform a detention into an arrest and trigger the need of a Miranda warning.

**C. Juveniles**

Interrogation of juveniles shall be conducted only as permitted by applicable state law and this Department’s order concerning dealing with juveniles.

**D. Miranda Warnings**

Prior to any custodial interrogation, officers shall advise the subject of those rights prescribed in *Miranda v. Arizona*. If the subject clearly indicates his or her understanding of those rights and does not unambiguously assert the right to silence or counsel, interrogation may proceed. A waiver of rights occurs when an arrestee clearly indicates an understanding of his or her rights and a willingness to answer questions. Waivers of rights may be explicit or may be implied from the fact that a subject understands that he or she does not have to talk or answer questions but then chooses to do so.

**1. In General**

- a. It is recommended that Miranda warnings should be read from a printed card. Reciting from memory or paraphrasing the warnings is unwise as it could lead to mistakes.
- b. The waiver of the Miranda rights will generally be obtained explicitly and in writing or recorded by audio and/or video. Oral waivers and even implied waivers may be sufficient, but written or electronically recorded waivers, particularly in felony cases, are easier to prove and therefore preferred.

**2. Non-Custodial Interrogation**

Miranda warnings are not required for non-custodial interrogation and therefore shall not be given in such circumstances. For purposes of this subsection, "non-custodial" means that police have not said or done things that would cause a reasonable person to believe that he or she has been arrested. As mentioned above, normal stops and brief detentions are not

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custodial for purposes of Miranda; consequently, Miranda warnings shall not be given in such situations. The fact that someone is “not free to leave” in a brief investigative detention normally does not trigger a Miranda requirement as the brief loss of freedom of movement does not by itself create “custody” for purposes of Miranda.

#### **3. Re-warnings**

Re-warnings of Miranda rights shall be given only under circumstances which warrant reasonable doubt that the arrestee understands that the earlier rights warning is still applicable. Re-warnings are not required following every short break in interrogation. (Examples of circumstances that might warrant re-warnings include a change in interrogation site, a break of more than a few hours, etc.)

#### **4. Exceptions to the Miranda Warning Requirement**

Certain types of questions by police do not require prior Miranda warning and waiver although they might elicit incriminating information. They are:

- a. Routine booking and processing questions related to arrest;
- b. General, on-scene questioning of persons present (example: officer arrives at the scene of a crime or disturbance, walks up to someone and asks "What happened here?");
- c. Questioning during traffic stops and other investigative detentions in which the officer's words and actions would not cause a reasonable person to believe that he or she has already been arrested; or
- d. Questions asked out of urgent necessity to dispel an imminent threat to public safety.

#### **5. Form of Warning and Waiver**

Miranda warnings and waivers are not required to follow any particular, precise language or phrasings. Officers shall assure, however, that Miranda warnings clearly convey the following messages:

- a. You have the right to remain silent;
- b. Anything you say can be used against you in court;
- c. You have the right to a lawyer to assist you prior to and during any questioning; and
- d. If you want a lawyer but cannot afford one, one will be appointed to represent you at no cost to you prior to and during any questioning.

Prior to beginning in-custody interrogation, the officer must receive an indication that the subject understands the Miranda rights. A subject who remains silent after the Miranda warnings does not give rise to a waiver of their rights. In this case the officer must get some type of

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acknowledgement such as a head nod or shoulder shrug indicating that the subject understood the Miranda rights prior to beginning any questioning. An implied waiver may be shown by the fact that a subject who knows he or she is not required to answer questions and nonetheless chooses to answer them.

**E. Procedure Following Assertion of Rights**

**1. Assertion of Right to Silence by In-Custody Suspect**

In this event, officers shall cease all interrogation efforts immediately and attempt no further interrogation on any matter unless or until:

- a. The suspect initiates new discussion with police of his or her involvement in criminal activity; or
- b. The suspect leaves custody.

- 1) If the suspect is no longer in custody, there is no requirement of a Miranda warning and waiver but the officer may choose to read Miranda again.

**2. Assertion of Right to Counsel by In-Custody Suspect**

In this event, officers shall cease all interrogation efforts immediately and no officer will attempt any further interrogation on any matter unless or until:

- a. Counsel is actually present at any subsequent interrogation;
- b. The suspect initiates new discussion with police of his or her involvement in criminal activity; or
- c. The suspect leaves custody.

- 1) If the suspect is no longer in custody, there is no requirement of a Miranda warning and waiver but the officer may choose to read Miranda again.

**3. Assertion of Right to Counsel by Formally Charged Suspect.**

- a. For purposes of this order, a person has been "formally charged" if he or she has been charged by the State of Kansas in a complaint, information or indictment with a felony offence.
- b. Any interrogation of a person formally charged should be cleared with the prosecuting attorney prior to questioning.
- c. Whenever a person has been formally charged, no interrogation shall occur unless the attorney for the suspect is present or has spoken with the defendant and has given permission to speak with

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the defendant without the attorney being present. This includes situations where the suspect initiates contact with law enforcement.

d. waiver of the right to counsel in this situation cannot be obtained through a *Miranda* warning and can only be accomplished in court. Officers who wish to question a suspect who is serving a sentence in a jail or prison shall consult the District Attorney's office for guidance on the law specifically applicable to such efforts.

**F. Custodial Interrogation of Juveniles**

1. Officers who conduct custodial interrogations of juveniles shall:
  - a. As necessary and appropriate, confer with the juvenile and parents or guardians to explain Department and juvenile justice system procedures;
  - b. Limit the duration of interrogation and have no more than two officers engaged in the interrogation, unless extraordinary circumstances exist; and
  - c. Note (a) and (b) above on their incident or supplemental report
2. When a juvenile is less than 14 years of age, no interrogation may be conducted until the juvenile has been afforded an opportunity to consult with a parent, guardian or attorney on whether the juvenile will waive the right to an attorney and the right against self-incrimination. If the parent is the alleged victim or alleged codefendant of the crime under investigation, the juvenile must be afforded an opportunity to consult with a parent not involved in the investigation, guardian or attorney.
3. *Miranda* applies to juveniles as it does to adults. The waiver of the *Miranda* rights will generally be obtained explicitly and in writing or recorded by audio and/or video.

**G. Documentations and Reporting**

Officers shall fully document the circumstances surrounding the conduct of interrogations and the recording of confessions and/or admissions and report them in an offense report or supplemental report. Audio and/or video equipment shall be used to record the interrogation when it is practical to do so.

**4.1.6 SEARCH AND SEIZURE**

Searches and seizures of persons, places, and property are regulated by the Fourth Amendment to the United States Constitution. The guiding principle of the Fourth Amendment, and therefore of the law of search and seizure, is "reasonableness." Any search and/or seizure which is not "reasonable" under the "totality" (all) of the circumstances violates the Fourth Amendment and is unconstitutional. Officers shall strive carefully and energetically to assure that their

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actions are at all times "reasonable." A police action is "reasonable" if there are good, lawful, reasons for it.

#### **A. The Warrant Requirement**

Searches and seizures generally require a search warrant in order to be reasonable. If an officer should need to obtain a search warrant, the officer shall notify a supervisor who will arrange for any assistance that the officer may require. The form, issuance, execution and service of search warrants are regulated by state statutory law. Also, state law may require warrants for certain arrests, even though the arrest is made outside private premises. Officers and supervisors shall assure that applicable state law regarding warrants is carefully followed. The following federal constitutional rules apply to entry into private premises to arrest:

1. Entry into the home of a person to be arrested requires an arrest warrant, absent a valid consent, hot pursuit or exigent circumstances, as explained below.
2. Entry into third party premises to arrest a person who is a visitor (not a resident) requires a search warrant, absent a valid consent, hot pursuit or exigent circumstances, as explained below.

#### **B. Exceptions to the Warrant Requirement**

Some search and/or seizure actions do not require warrants but are nevertheless subject to strict legal requirements and procedural rules. The following is a summary of those requirements and rules.

##### **1. Frisk**

This is a limited, "pat-down" type, protective search of outer clothing and quickly accessible carried belongings. It is permitted only during lawful seizures of persons (stops) and only if the officer has reasonable suspicion that a person is armed and may constitute a danger to the officer or another person. If the subject is in or beside a vehicle, and if the officer reasonably suspects the presence of weapon(s) that could be quickly reached and used against him/her, he or she may conduct a limited search of quickly accessible portions of the passenger compartment for weapons.

##### **2. Search Incident to an Arrest/Strip Searches/Body Cavity Searches**

- a. A search incident to arrest is a full search for evidence and weapons within the area of immediate access of an arrestee. It is permitted pursuant to every lawful arrest and must be conducted contemporaneously with the arrest. Probable cause to arrest is required but the search may be conducted whether or not there is any reason to believe evidence and/or weapons will be found.

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- b. When a lawful arrest is affected, a law enforcement officer may reasonably search the person arrested and the area within such person's immediate presence for the purpose of:
  - 1) Protecting the officer from attack;
  - 2) Preventing the person from escaping; or
  - 3) Discovering the fruits, instrumentalities, or evidence of a crime
- c. The search may extend to the person, his or her clothing and carried belongings, and the area to which he or she has immediate access (sometimes called "lunge area"). If the subject is seized from a motor vehicle, the search may not include the vehicle if the subject has been removed from the vehicle and secured elsewhere, which will typically be the case. When that has occurred, there shall be no search incident to arrest of the arrestee's car unless there is reason to believe that evidence of the crime of arrest is present in the passenger compartment, in which case that area may be searched. Nothing in this subsection eliminates the possibility in some cases of an inventory search or probable cause "Carroll" search, where facts and law permit.
- d. Strip searches are prohibited in any case where a person is detained or arrested solely for a traffic or regulatory, nonviolent misdemeanor offense unless there is probable cause to believe that the person is concealing a weapon or controlled substance and authorized by a supervisor. Strip searches shall be conducted by persons of the same sex as the person being searched and shall be conducted in private unless waived by the person being searched. Following completion of a strip search, the officer conducting the search shall prepare a report which includes:
  - 1) The name and sex of the person searched;
  - 2) The name and sex of the person conducting the search;
  - 3) The time, date and place of the search; and
  - 4) A statement of the results of the search.
- e. Body cavity searches shall be conducted only under the authority of a search warrant specifically authorizing a body cavity search. Only a licensed physician or registered nurse may conduct a body cavity search. Only officers of the same sex as the person being searched may be present while a body cavity search is being conducted.
- f. In the event that an arrestee wants or needs access to certain areas for his or her convenience and/or comfort, the officer shall inform the arrestee that such access is conditional upon the arrestee's consent to a prior search by the officer of the areas to which access is requested. If the arrestee consents, the appropriate search shall be conducted. If consent is withheld, the arrestee shall not be allowed the requested access. These strict rules are absolutely necessary for officer protection and survival as well as the safety of the arrestee and others.

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- g. Normally, arrestees shall be handcuffed before transportation. A supervisor's approval is necessary to transport an arrestee without handcuffs, unless medical necessity precludes handcuffing. Handcuffing shall precede searches, except if immediate frisk is required by circumstances, in which case handcuffing shall occur as quickly thereafter as possible.

#### **3. Inventory Search**

Inventory searches of impounded vehicles or other property is only permitted where the police have lawful custody of the property pursuant to a statute, ordinance, or where "reasonable grounds" exist. The purposes of an inventory search is to protect the owner's property while it remains in police custody, to protect the police against claims of lost or stolen property, and to protect the police from hazardous objects or materials contained within the property.

It is the policy of this Department that all vehicles (and other property) which are impounded be searched and inventoried. In any event, search and inventory shall extend only to areas and containers within the vehicle that can be opened and accessed without breakage or damage. Inventory searches will be properly documented in the incident or supplemental report, and when officers take property into custody, officers must record this on the 'Evidence Custody Receipt' and/or the 'Vehicle Seizure Envelope.'

#### **4. Plain View Seizure**

This seizure of property is permitted when an officer who is lawfully present in an area, sees in plain view an item that the officer has probable cause to believe is contraband or other evidence of crime, and that item can be seized through a lawful right of access to the object itself.

(Example: an officer lawfully present on the street may not use this rule to force warrantless entry into a home in which the officer can see, through an un-curtained front window, a marijuana plant. Such an entry requires an additional privacy intrusion in order to enter the home and access the item.)

#### **5. Probable Cause Search of a Motor Vehicle in a Public Area ("Carroll Doctrine")**

This warrantless search is permitted when an officer has probable cause to believe that evidence of crime is in an apparently operable motor vehicle that is in a public area. No additional or exigent circumstances are required and the search may extend to any area within the vehicle that could reasonably contain the evidence sought. Closed containers may be opened and searched if there is probable cause to believe they contain

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evidence of crime. Breakage is permitted if reasonably necessary to reach criminal evidence. For purposes of this subsection, a "public area" is any area on which public vehicular traffic is normally permitted, (e.g., streets, highways, grocery or mall parking lots, apartment complexes parking lots, etc.)

#### **6. Consent Search**

This search is permitted when a person who has a reasonable expectation of privacy in an area (e.g., home owner, resident, tenant, or vehicle operator) voluntarily grants permission for police to search that area. The consent must be voluntarily given by an individual with either actual or apparent authority over the place to be searched. If two adult co-residents are both present at private premises, one "consenting" to the search, the other forbidding it, officers shall respect the denial of consent by the one and shall not utilize the purported consent of the other.

Note: Compliance with an order or demand by police is not a "voluntary" grant of permission. This search does not require probable cause or reasonable suspicion but is limited to those areas "reasonably" within the consent. (Example: during a lawful stop, an officer asks a vehicle operator for "permission to search this car for drugs." Permission is granted. Unless the driver objects or withdraws consent, the consent search may extend to any containers within the vehicle that can be opened without breakage.) Consent may be withdrawn at any time; if it is withdrawn, the officer shall immediately stop the search (unless, by that time, other lawful search justifications are present).

#### **7. Open Fields and Woods/Abandoned Property**

Certain areas, though sometimes on private property, do not involve a reasonable expectation of privacy. Therefore, an officer is permitted to walk through open fields and/or woods without a warrant. Also, an officer may inspect, without a search warrant, the contents of trash receptacles in common areas of multi-tenant commercial or residential premises. An officer may pick up and examine the contents of items or containers, which are apparently discarded in public areas. Whether or not there is a reasonable expectation of privacy (and therefore a search warrant requirement) depends on all circumstances surrounding a particular situation.

The term "curtilage" refers to those areas immediately surrounding a dwelling. The curtilage is considered part of the home itself for Fourth Amendment purposes. This however does not prevent an officer, like any visitor to the property, from approaching the home by use of common, regularly used public pathways (e.g., front walks) to reach the front door of a residence in order to make an inquiry. In this situation, the officer has not

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intruded upon any reasonable expectation of privacy and no justification is required for such an action.

#### **8. Hot Pursuit**

An officer who begins a lawful custodial action in a public area and the subject flees into private premises, the officer may enter those premises without a warrant to complete the custodial action but only if the pursuit of the fleeing subject is immediate and continuous.

#### **9. Exigent Circumstances**

Where there is an emergency, time critical need to act immediately without a warrant to avert unacceptable consequences in a serious and/or dangerous matter, an officer may enter private premises or a vehicle without a warrant to deal with such exigencies. Once such exigencies have been extinguished officers shall return immediately to normal rules of search and seizure, including adherence to warrant requirements. The possible loss of evidence of minor, non-dangerous offenses does not constitute exigent circumstances nor do public annoyances such as loud music. The threshold justification for warrantless action based on exigent circumstances is probable cause. The speculative possibility that an emergency might exist does not create exigent circumstances.

#### **10. Crime Scenes**

There is no crime scene exception to the warrant requirement. Generally, however, officers may initially enter a crime scene without a warrant in order to provide needed emergency assistance, locate and assist victims, apprehend perpetrators and secure important evidence that would likely to be lost to the passage of time. Once those exigencies are eliminated, ordinary warrant requirements apply to further searching, except by valid consent.

#### **4.1.7 OTHER ACTIONS**

Investigative actions and uses of authority that are not dealt with explicitly in this (or another) order shall be conducted (if at all) in strict compliance with Departmental training, applicable state laws, and federal Constitutional requirements. Officers shall consult with their supervisors regarding any questions that may arise. Officers and supervisors shall contact their supervisors and/or departmental legal counsel if questions have not been answered clearly and appropriately.

#### **4.1.8 SEARCH WARRANTS- WRITTEN FORM**

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#### **A. In General**

1. Prior to executing the search warrant, the officer who obtained the search warrant shall verify the information contained in the warrant, attempt to determine if any circumstances have changed that make executing the warrant unjustifiable or undesirable and confirm the actual location of the search site to avoid searching the wrong location. Prior to the actual execution of the search warrant, a pre-entry briefing shall be held with all search personnel. This briefing shall provide and document information in the search warrant and the investigative documentation of the place to be searched.
2. The following individuals shall be notified regarding the execution of the search warrant:
  - a. A command officer within the chain of command;
  - b. SCECC;
  - c. The on-duty watch commander or designee; and
3. The TPD Response Team shall serve all search warrants where forced entry is required

#### **B. Applying for a Search Warrant**

1. Search warrants are available at all hours.
2. The officer/investigator seeking the warrant shall complete appropriate forms.
3. Officers may file a written application (affidavit) for the issuance of a search warrant. Affidavits to support the issuance of a search warrant will include the following:
  - a. The criminal offense committed;
  - b. Description of the premises, properties, and persons to be searched;
  - c. Description of the property, evidence, and contraband to be seized;
  - d. Any information provided by an informed or concerned citizen to support the issuance of the search warrant;
  - e. Any information obtained as a result of an independent investigation by the officer;
  - f. Statement of probable cause;
  - g. Justification for obtaining an "other party" and/or a "no knock" clause, if needed; and
  - h. The signature of a neutral and detached magistrate.
4. Officers shall contact the on-call District Attorney for approval, when possible.

#### **C. Issuance of a Search Warrant**

1. After proofreading the warrant and affidavit, officers will need the original and two copies of each document.

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2. The officer who is named as the affiant must present the affidavit and warrant to a District Court judge for consideration.
3. The judge shall review and sign the affidavit and warrant if he or she is satisfied that probable cause exists.
4. It is necessary to have the judge sign the original and one copy of both the warrant and affidavit.
5. A copy of the affidavit and warrant should be left with the judge.

#### **D. Executing a Search Warrant**

1. A search warrant must be executed within 96 hours from the time of its issuance. If the warrant is not executed within the 96 hours, it will be void and must be returned to the court of issuance;
2. A uniformed officer is required for the execution of all search warrants into private premises or buildings when forced entry is required.
3. All non-uniformed officers shall be clearly identifiable, wearing clothing and equipment that clearly identifies them as police officers;
4. Officers will first perform a security sweep for other individuals located or hiding within the entire premises. The officer executing the warrant may reasonably detain search any person on scene;
5. Photographs or video should be taken prior to the beginning of any search activities once the location is secured particularly documenting the condition of the location and any damage resulting from the entry.
6. Officers will limit their search to the location, person(s), and properties particularly described in the warrant. The areas to be searched are limited to those areas where the object(s) sought might be located;
7. Items that may be seized include contraband, stolen property and evidence of the commission of a crime;
8. The officer who prepared the search warrant is responsible for preparing an inventory of the items seized during the execution of the warrant;
9. When executed, the duplicate copy of the warrant and an inventory of seized items will be left with the person from whom any items are seized. If no person is available, a copy of the warrant and an inventory of the items seized will be left in a conspicuous place on the premises;
10. Photographs will be taken of the location prior to departing specifically documenting the condition of the premises and any significant/unusual items seized after the search is completed.
11. Property seized shall be turned in during the officer's current shift with the exception of evidence collected by CSI that requires drying or additional processing or approval by a supervisor;
12. A supplemental report shall be prepared documenting the service of the warrant;
13. When the response team is utilized, the case officer or officer requesting warrant service will prepare two sealed envelopes containing the address as listed on the warrant. One sealed envelope will be given to the dispatch supervisor and the other to the watch commander. The case officer or his/her

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designee will notify dispatch when the teams are preparing to execute the warrant, at that time the envelopes may be opened to view the case address. If the warrant is cancelled or aborted, the envelopes will remain unopened and the case officer will retrieve the envelopes and destroy them.

#### **E. Return of the Search Warrant**

After the search has been completed, officers will return the search warrant and file a verified list of the items seized with the judicial officer named in the warrant or before any court of competent jurisdiction.

#### **F. Search Warrants for Areas beneath the Body's Surface**

Intrusions into the body (blood tests, stomach pumping, surgery, etc.) may be permitted if conducted pursuant to a search warrant, or if exigent circumstances exist and strong probable cause that the evidence sought is present. This type search is limited to those intrusions that are "reasonable" and safe for the suspect and must be conducted, if at all, by qualified medical personnel.

#### **G. Final Documentation, Preparation and Return**

1. The original warrant and affidavit will be completed indicating when it was served and any items seized.
2. The completed warrant and affidavit is returned to the issuing court within 10 days.
3. The officer requesting the warrant will complete a supplement outlining the details of the issuance and service of the warrant to include:
  - a. Date and time received;
  - b. Type and nature of document (such as criminal search warrant);
  - c. Case number or docket number of case;
  - d. Judge and court received from;
  - e. Name and address of person/persons served;
  - f. Name of all officers involved;
  - g. Date service is due;
  - h. Date and time executed;
  - i. The tactics used for service; and
  - j. If unable to complete warrant execution, list reasons why.

#### **4.1.9 SEARCH WARRANTS- ELECTRONIC**

##### **H. In General**

1. Prior to executing the search warrant, the officer who obtained the search warrant shall verify the information contained in the warrant, attempt to determine if any circumstances have changed that make executing the warrant unjustifiable or undesirable and confirm the actual location of the

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search site to avoid searching the wrong location. Prior to the actual execution of the search warrant, a pre-entry briefing shall be held with all search personnel. This briefing shall provide and document information in the search warrant and the investigative documentation of the place to be searched.

2. The following individuals shall be notified regarding the execution of the search warrant:
  - a. A command officer within the chain of command;
  - b. SCECC;
  - c. The on-duty watch commander or designee; and
  - d. If executed outside the City of Topeka, the local law enforcement agency.
3. The TPD Response Team shall serve all search warrants where forced entry is required

#### I. Applying for a Search Warrant

1. Search warrants are available at all hours.
2. The officer/investigator seeking the warrant shall complete a "Risk Assessment Checklist."
3. Officers shall contact a judge and gain approval before submitting an electronic search warrant.
4. Once a judge agrees to proceed with an electronic submission the officer will need to sign onto the court's secure portal using their user ID and password.
  - a. <https://public.shawneecourt.org/SWUpload>
5. Select -Upload Search Warrant
6. Input applicable data
  - a. Warrant type
  - b. Warrant description
  - c. Name of judge spoken to
  - d. Officer should confirm their contact information
7. Click submit
8. Upload the affidavit and search warrant document in PDF format.
9. Affidavits to support the issuance of a search warrant will include the following:
  - a. The criminal offense committed;
  - b. Description of the premises, properties, and persons to be searched;
  - c. Description of the property, evidence, and contraband to be seized;
  - d. Any information provided by an informed or concerned citizen to support the issuance of the search warrant;
  - e. Any information obtained as a result of an independent investigation by the officer;
  - f. Statement of probable cause;

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- g. Justification for obtaining an “other party” and/or a “no knock” clause, if needed
- 10. The judge will review the application and will either approve or deny the search warrant.
  - a. If approved, a signature page will be appended to the submitted document and sent back to the requesting officer for printing and execution.
  - b. If denied, the document will be sent back to the requesting officer with the status “Rejected by judge”.
- 11. Officers shall contact the on-call District Attorney for approval, when possible.

#### **J. Executing a Search Warrant**

- 1. A search warrant must be executed within 96 hours from the time of its issuance. If the warrant is not executed within the 96 hours, it will be void and must be returned to the court of issuance;
- 2. A uniformed officer is required for the execution of all search warrants into private premises or buildings when forced entry is required.
- 3. All non-uniformed officers shall be clearly identifiable, wearing clothing and equipment that clearly identifies them as police officers;
- 4. Officers will first perform a security sweep for other individuals located or hiding within the entire premises. The officer executing the warrant may reasonably detain search any person on scene;
- 5. Photographs or video should be taken prior to the beginning of any search activities once the location is secured particularly documenting the condition of the location and any damage resulting from the entry.
- 6. Officers will limit their search to the location, person(s), and properties particularly described in the warrant. The areas to be searched are limited to those areas where the object(s) sought might be located;
- 7. Items that may be seized include contraband, stolen property and evidence of the commission of a crime;
- 8. The officer who prepared the search warrant is responsible for preparing an inventory of the items seized during the execution of the warrant;
- 9. When executed, the duplicate copy of the warrant and an inventory of seized items will be left with the person from whom any items are seized. If no person is available, a copy of the warrant and an inventory of the items seized will be left in a conspicuous place on the premises;
- 10. Photographs will be taken of the location prior to departing specifically documenting the condition of the premises and any significant/unusual items seized after the search is completed.
- 11. Property seized shall be turned in during the officer’s current shift with the exception of evidence collected by CSI that requires drying or additional processing or approval by a supervisor;
- 12. A supplemental report shall be prepared documenting the service of the warrant;

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13. When the response team is utilized, the case officer or officer requesting warrant service will prepare two sealed envelopes containing the address as listed on the warrant. One sealed envelope will be given to the dispatch supervisor and the other to the watch commander. The case officer or his/her designee will notify dispatch when the teams are preparing to execute the warrant, at that time the envelopes may be opened to view the case address. If the warrant is cancelled or aborted, the envelopes will remain unopened and the case officer will retrieve the envelopes and destroy them.

#### K. Return of the Search Warrant

After the search has been completed, officers will return the search warrant and file a verified list of the items seized with the judicial officer named in the warrant or before any court of competent jurisdiction.

#### L. Search Warrants for Areas beneath the Body's Surface

Intrusions into the body (blood tests, stomach pumping, surgery, etc.) may be permitted if conducted pursuant to a search warrant, or if exigent circumstances exist and strong probable cause that the evidence sought is present. This type search is limited to those intrusions that are "reasonable" and safe for the suspect and must be conducted, if at all, by qualified medical personnel.

#### M. Final Documentation, Preparation and Return

1. The Officer will sign onto the court's secure portal using their user ID and password
  - a. <https://public.shawneecourt.org/SWUpload>
  - b. Select RETURN SEARCH WARRANT
  - c. Click UPLOAD
  - d. Click either
    - 1) WARRANT NOT EXECUTED NO RETURN OR UPLOAD or
    - 2) BROWSE to upload the return in PDF format
  - e. Click SUBMIT
2. The original warrant and affidavit will be completed indicating when it was served and any items seized.
3. The completed warrant and affidavit is returned to the issuing court within 10 days.
4. The officer requesting the warrant will complete a supplement outlining the details of the issuance and service of the warrant to include:
  - a. Date and time received;
  - b. Type and nature of document (such as criminal search warrant);
  - c. Case number or docket number of case;

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- d. Judge and court received from;
- e. Name and address of person/persons served;
- f. Name of all officers involved;
- g. Date service is due;
- h. Date and time executed;
- i. If unable to complete warrant execution, list reasons why.

**4.1.10 WARRANT ARRESTS**

A. Officers shall complete a KSAR Warrant Arrest Report on all warrant-related arrests.

B. Municipal Court City Warrants

- 1. If the arrest occurs during normal business hours, the subject shall be transported to the Municipal Court to see the judge.
- 2. If the Court is closed the subject shall be transported to the Shawnee County Department of Corrections (DOC). At the DOC the officer should call and request that a copy of the warrant be faxed to the DOC.
  - a. The Records Unit personnel check warrants on Shifts #1 & #2. Shift #3 warrants checks shall be performed by front desk officers.
  - b. All City warrants are stored and processed by the Department's Warrants Unit.
- 3. Upon request, officers shall read the warrant to the arrested person or advise them, if possible, of the reason for the warrant.
- 4. City Municipal Warrants are maintained in Municipal Court's Full Court database.

C. City of Topeka Municipal Warrant arrests by other Jurisdictions

When a law enforcement officer outside Shawnee County detains a person with a confirmed City of Topeka warrant:

- 1. The SCECC dispatcher or Records clerk will notify the watch commander of the request for extradition and the details of the warrant, specifically including the dollar amount on the warrant.
- 2. Depending on call load and manpower the watch commander will direct one of the following:
  - a. Advise the officer to tell the requesting agency to have the person being detained report to Municipal Court not later than the next business day.
  - b. Send two TPD officers to transport the subject back to the city, following provisions listed above.

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#### **D. Shawnee County Court Warrant**

1. After warrant confirmation officers will:
  - a. Transport the subject to the DOC. While at the DOC, the transporting officer or back officer will call SCECC and request, the Sheriff's office to fax the warrant to the DOC.
  - b. Or, transport the subject to the Department to be interviewed or for other law enforcement purposes.
2. All non-City criminal and civil warrants are stored and processed by the Shawnee County Sheriff's office.
3. Upon request, officers shall read the warrant to the arrested person or advise them, if possible, of the reason for the warrant.
4. Officers shall complete the service information on the warrant which includes the:
  - a. Date and time the service was executed;
  - b. Name of the officer executing the service;
  - c. Name of the person who was served (if required);
  - d. Method of the service (if required); and
  - e. Location of the service.
5. Officers will place the CR case number in the "warrant #" box on the arrest report.

#### **E. Out of County Warrants**

1. When officers detain a subject with a warrant outside of Shawnee County the dispatcher shall teletype the issuing agency. If they confirm the warrant and request that the subject be detained, officers shall transport the subject to the DOC.
2. The officer should request that the confirmation be faxed to the DOC.
3. Officers shall place the CR case number in the 'Warrant #' box on the Arrest Report.

#### **F. Out of State Warrants**

1. Personnel shall prepare an offense report, supplemental narrative and charging affidavit requesting charging of the suspect with being a fugitive from justice, if NCIC notifies TPD the subject is extraditable.

### **4.1.11 EYEWITNESS IDENTIFICATION AND SEQUENTIAL PHOTO LINEUPS**

#### **A. Show-up**

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The use of show-ups should be avoided whenever possible in preference for the use of a photo array—especially in cases involving violence and trauma to the victim. However, when circumstances require the prompt display of a suspect to a witness, the following guidelines shall be followed to minimize the potential suggestiveness of this practice.

1. Document the witness' description of the suspect prior to conducting the show-up.
2. Use a show-up only when the suspect is detained within a reasonably short timeframe following the offense.
3. Do not use single suspect show-ups if probable cause to arrest the suspect has already been established.
4. When possible, transport the witness to the location of the suspect.
5. Do not conduct show-ups when the suspect(s) are in the patrol car, handcuffed, or physically restrained by police officers unless necessary due to safety.
6. Do not take suspects to witness' residence unless absolutely necessary and the residence is the scene of the crime.
7. Caution the witness that the person he or she is about to see may or may not be the suspect.
8. Separate witnesses and do not allow communication between them before or during a show-up.
9. If one witness identifies the suspect, use a photo lineup or sequential photo array for remaining witnesses.
10. Do not present the same suspect to the same witness more than once.
11. Do not require show-up suspects to put on clothing worn by, speak words uttered by, or perform other actions of the suspect.
12. Avoid words or conduct of any type by officers and/or the administrator that may suggest to the witness that the individual is or may be the suspect.
13. Ask the victim how certain he or she is of any identification that is made of a suspect. Document exact words used by the victim without prompting the victim to elaborate.
14. Remind the victim not to talk to other witnesses or to anyone else who may disclose the information provided to police during the identification.
15. Officers should use audio/visual equipment to record the identification process.
16. Document the time and location of the show-up, officers present, and the outcome of the procedure.

#### Show up Instructions to be read aloud to the witness:

*You are going to be asked to view some people (even if only one person is shown).*

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*The person you saw may or may not be among the people you are about to view.*

*It is just as important to clear innocent persons from suspicion as it is to identify the guilty.*

*Regardless of whether you identify someone, we will continue to investigate the incident.*

*If you identify someone, I will ask you to state, in your own words, how certain you are.*

*If you do select someone, please do not ask us questions about the person you have selected, because we cannot share that information with you at this time.*

*Regardless of whether you select a person, please do not discuss the procedure with any other witnesses in the case or the media.*

*Do you have any questions before we begin?*

If an identification is made, ask: "Without using a numerical scale, how certain are you?"

**B. Photographic Identifications**

**1. Creating a Photo Lineup or Sequential Photo Array.**

- a. The photo lineup or sequential photo array should consist of a minimum of six photographs. Use a minimum of five filler photos together with only one suspect. It is recommended that a filler photograph be used as the lead photo and that two blank photos be introduced following the sixth photo. Number all photographs and blanks.
- b. Use current photographs of individuals who are reasonably similar in age, height, weight, and general appearance and of the same sex and race, in accordance with the witness' description of the suspect. Do not mix color and black and white photos; use photos of the same size and basic composition, and never mix mugshots with other snapshots or include more than one photo of the same suspect.
- c. Cover any portion of mugshots or other photographs that provide identifying information on the subject and similarly cover other photos used in the array.

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2. Conducting the Photographic Identification
  - a. An investigator or officer who is unaware of the identity of the suspect, acting as an independent administrator, should present the photos when possible.
  - b. No one who is aware of the suspect's identity may be present during the administration of the photo array unless an independent administrator is unavailable.
  - c. If an independent administrator is not available, precautions should be taken to achieve neutral administration with no influence to the witness as to who the suspect may be.
  - d. Record (audio and/or video) the eyewitness identification procedure.
  - e. Give the witness a copy of the following instructions prior to presenting the photo array and read the instructions aloud before the identification procedure:

*You are being asked to view a set of photographs.*

*You will be viewing the photographs one at a time and in random order.*

*Please look at all of them. I am required to show you the entire series.*

*Please make a decision about each photograph before moving on to the next one.*

*The person you saw may or may not be in the set of photographs you are about to view.*

*You should remember that it is just as important to clear innocent persons from suspicion as to identify the guilty.*

*The officer showing the photographs does not know whether any of the people in the array are the person you saw.*

*The individuals in the photographs may not appear exactly as they did on the date of the incident because features such as head and facial hair are subject to change.*

*Regardless of whether or not you select a photograph, the police department will continue to investigate the incident.*

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*If you select someone, the procedure requires the officer to ask you to state, in your own words, how certain you are.*

*If you do select a photograph(s), please do not ask the officer questions about the person you have selected, as no information can be shared with you at this stage of the investigation.*

*Regardless of whether you select a photograph(s), please do not discuss the procedure with any other witnesses in the case or the media.*

*Do you have any questions before we begin?*

- f. Position and present the photos in a folder or envelope so the witness does not know the number of photos that will be shown.
- g. Show the photo array to only one witness at a time; separate witnesses so they will not be aware of the response of the other witnesses.
- h. Avoid multiple identification procedures in which the same witness views the same suspect more than once.
- i. Do not comment on selections or outcomes of the procedures in any way.
- j. Ask the witness to describe his or her certainty about any identification that is made. Document the witness' response and level of confidence.
- k. Ask the witness to complete and sign the eyewitness ID form.
- l. Preserve the photo array together with full information about the identification process for future reference.

C. Lineups – the Topeka Police Department does not use live lineups for eyewitness identification.

**4.1.12 Demand for Information and/or Documentation for Law Enforcement Investigative Purposes**

1. Medical records and/or protected health information, if needed for investigative purposes, can be obtained from covered entities in compliance with the Health Insurance Portability & Accountability Act of 1996 (HIPAA), under 45 C.F.R 164.512(f)(1-6) in the following manner.

A. The Department's "Demand for Information and/or Documentation for Law Enforcement Investigative Purposes" form needs to be completed with the patient's name and the name of the provider listed. The section

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identifying the specific information requested will also need to be completed.

B. The requesting law enforcement official then declares, via signature, under penalty of perjury by the laws in the State of Kansas that the provided information is true and correct.

C. The listed form will be delivered to the provider to accomplish the investigative task of obtaining information and/or documentation as denoted therein.

D. Upon receipt of the information and/or documentation, and after necessary investigative review has been completed, all will be placed into an evidentiary envelope and secured into the property/evidence room under the applicable case file.

1. None of the obtained documents will be turned into the records section.

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ATTACHMENT A



**CITY OF TOPEKA**

DEPARTMENT OF POLICE  
320 S. Kansas Ave., Suite 100  
Topeka, KS 66603-3640  
Tel: (785) 368-9551  
Fax: (785) 368-9458  
www.topeka.org

An Accredited  
Law Enforcement Agency



**DEMAND FOR INFORMATION AND/OR DOCUMENTATION**  
**FOR LAW ENFORCEMENT INVESTIGATIVE PURPOSES**

The Health Insurance Portability and Accountability Act of 1996 (HIPAA) allows covered entities to disclose protected health information to law enforcement officials in the investigation of crimes and protection of victims. 45 C.F.R. §164.512(f)(1)-(6). Pursuant to that authorization, this is an investigatory demand for information regarding:

Patient's Name:

Name of Provider:

The undersigned, declares under penalty of perjury under the laws of the state of Kansas that the following statements are true and correct:

1. I am a law enforcement officer empowered by law to investigate or conduct official inquiry into potential violations of the law.
2. The information sought is relevant and material to a legitimate law enforcement inquiry.
3. This is a specific request and it will be limited in scope to the extent reasonably practicable in light of the purpose for which the information is sought.

The specific information requested is as follows:

4. De-identified information cannot reasonably be used.

\_\_\_\_\_  
Name of Law Enforcement Official

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Executed on Date

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ATTACHMENT B



**TOPEKA POLICE DEPARTMENT**  
**PHOTO ARRAY INSTRUCTION FORM**



1. You are being asked to view a set of photographs.
2. You will be viewing the photographs one at a time in random order.
3. Please look at all of them. I am required to show you the entire series.
4. Please make a decision about each photograph before moving on to the next one.
5. The person you saw may or may not be in the set of photographs you are about the view.
6. You should remember that it is just as important to clear innocent persons from suspicion as to identify the guilty.
7. The officer showing the photographs does not know whether any of the people in the array are the person you saw.
8. The individuals in the photographs may not appear exactly as they did on the date of the incident because features such as head and facial hair are subject to change.
9. Regardless of whether or not you select a photograph, the police department will continue to investigate the incident.
10. If you select, someone, the procedure requires the officer to ask you to state, in your own words, how certain you are.
11. If you do select a photograph(s), please do not ask the officer questions about the person you have selected, as no information can be shared with you at this stage of the investigation.
12. Regardless of whether you select a photograph(s), please do not discuss the procedure with any other witnesses in the case or the media.
13. Do you have any questions before we begin?

Witness Signature \_\_\_\_\_ Date: \_\_\_\_\_

Officer Signature \_\_\_\_\_ Date: \_\_\_\_\_

Administrator Signature: \_\_\_\_\_ Date: \_\_\_\_\_

**If identification is made:**

Question: "without using a numeric scale, tell me how certain you are?" Document answer:

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ATTACHMENT C

**Officer's Field Card for Show-up Identifications**

A show-up should be conducted shortly after the commission of the crime or the witness' observation of the suspect. A person should only be detained when the officer has reasonable suspicion to believe the person could be a suspect.

Barring special circumstances, the witness should be transported to the suspect's location. When transporting a witness to a show-up, attempt to prevent the witness from hearing radio transmissions or other officer-to-officer conversations related to the suspect or the investigation.

A suspect should only be viewed by one witness at a time out of the presence and hearing of other witnesses. Talking among witnesses should not be allowed.

Minimize suggestiveness. Unless necessary for the safety of officers or others, show-ups should not be conducted if the suspect is seated in the rear of a police cruiser, in a cell, or in any other enclosure associated with custody. If the suspect is handcuffed, he should be turned so that the handcuffs are not visible to the witness.

Do not tell the witness where the suspect was found, whether the suspect said anything or did anything suspicious, or whether the suspect was found with items potentially related to the crime.

Once a witness has positively identified the suspect at a show-up, do not conduct additional show-ups with the same suspect.

If the witness fails to make an identification, or is not sure of an identification, and probable cause to arrest cannot be immediately developed, the person must be permitted to leave.

Instructions to be read aloud to the witness:

1. You are going to be asked to view some people (even if only one person is shown).
2. The person you saw mayor may not be among the people you are about to view.
3. It is just as important to clear innocent persons from suspicion as it is to identify the guilty.
4. Regardless of whether you identify someone, we will continue to investigate the incident.
5. If you identify someone, I will ask you to state, in your own words, how certain you are.
6. If you do select someone, please do not ask us questions about the person you have selected, because we cannot share that information with you at this time.
7. Regardless of whether you select a person, please do not discuss the procedure with any other witnesses in the case or the media.
8. Do you have any questions before we begin? If an identification is made, ask: "Without using a numerical scale, how certain are you?"