

Right to Know

434.1 PURPOSE

To ensure that members of the Syracuse Police Department interact with members of the public consistent with the **RIGHT TO KNOW ACT**, as outlined in section 19-9 of the Revised General Ordinances of the City of Syracuse.

434.1.1 DEFINITIONS

Officer - The term “officer” refers to a peace officer or police officer as defined in the Criminal Procedure Law, who is employed by the City of Syracuse.

Founded Suspicion - Founded suspicion that criminal activity is afoot arises when there is some present indication of criminality based on observable conduct or reliable hearsay information (i.e. – an officer has sufficient information to begin to suspect a person of criminal conduct).

Common Law Right of Inquiry (Level 2 Encounter) - An officer who has “founded suspicion” that criminal activity is afoot may approach a person, and among other things, seek consent to search. Consent must be voluntarily given. An officer must at least be at this level to ask for consent to search anyone or anything.

Reasonable Suspicion - Reasonable suspicion exists when the information known to an officer would make an ordinarily prudent and cautious person under the circumstances believe that a felony or Penal Law misdemeanor has been, is being, or is about to be committed.

Terry Stop (Level 3 Encounter) - An officer who has an individualized reasonable suspicion to believe that a person or persons have committed, are committing, or are about to commit a Penal Law misdemeanor or felony may stop and detain that person or persons. An officer must have a particularized and objective basis supported by specific articulable facts, for suspecting the person stopped of criminal conduct.

Frisk - If an officer reasonably suspects that they are in danger of physical injury, they may frisk a person for a deadly weapon or any instrument, article or substance readily capable of causing serious physical injury of a sort not ordinarily carried in public places by law-abiding persons. A frisk is *generally* limited to a pat down, or carefully limited running of the hands over the outside of a person’s clothing, but may extend to a bag or similar item that a person is holding or that is within that person’s reach, depending on the circumstances. A frisk is typically, but not exclusively, associated with a Level 3 Encounter.

Noncustodial Questioning - The questioning of an individual during an investigation into criminal activity, where such individual has not been detained and is free to end the encounter at will (**Level 2 Encounter**).

Law Enforcement Activities:

- (a) Noncustodial questioning of individuals (**Level 2 Encounter**)

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- (b) Stops where an officer has an individualized, reasonable suspicion that the person stopped has committed, is committing, or is about to commit a crime and where a reasonable person would not feel free to end the encounter (**Level 3 Encounter**)
- (c) Frisks (**Level 3 Encounter**)
- (d) Searches of persons or property, including vehicles
- (e) Roadblock or checkpoint stops
- (f) Home searches
- (g) Investigatory questioning of victims or witnesses to crimes
- (h) Traffic stops

434.2 GENERAL PUBLIC CONTACT PROCEDURE

When any officer interacts with a member of the public and initiates the above described Law Enforcement Activities, they shall:

- (a) Clearly state their name, rank, and current assignment; and
- (b) Explain the reason for the particular law enforcement activity
- (c) Offer a department issued pre-printed **RIGHT TO KNOW BUSINESS CARD** upon conclusion of a law enforcement activity, except in cases when a summons is issued or an arrest is made.
 - 1. Where such person is a minor, and a parent, legal guardian or responsible adult is on scene, the **RIGHT TO KNOW BUSINESS CARD** shall be offered to that adult.
- (d) If an officer does not have an adequate number of department issued pre-printed **RIGHT TO KNOW BUSINESS CARDS** on their person at the conclusion of such law enforcement activity, they shall:
 - 1. Offer to provide to such person a department issued generic/handwritten **RIGHT TO KNOW BUSINESS CARD**, with the appropriate identification information (i.e. – name, rank and current assignment) written legibly on the front side; or
 - 2. Offer to provide to such person the appropriate identification (i.e. – name, rank and current assignment) and allow sufficient time for such person to record such information when an officer does not have an adequate number of pre-printed or generic/handwritten **RIGHT TO KNOW BUSINESS CARDS** on their person at the conclusion of such law enforcement activity.

Any officer may offer business cards at their discretion in situations that fall outside of the defined law enforcement activities listed above. In addition, officers are also required to provide business cards or identification information, as outlined in section 434.2 sub (d), at the request of any person requesting identifying information, unless one of the exceptions below apply.

Officers need not proactively identify themselves, explain the reason for a law enforcement encounter, or offer a **RIGHT TO KNOW BUSINESS CARD** in the following situations:

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- (a) If they are engaged in a law enforcement activity that is part of an approved undercover activity or operation;
- (b) Where an emergency exists requiring immediate action to respond to an imminent and substantial risk of injury to themselves or any other person, or imminent and substantial damage to property, or where immediate action is necessary to forestall the imminent escape of a suspect or imminent destruction of evidence.
- (c) During searches predicated upon entrance to a public building or facility, location, event or gathering, and where such person's entrance into any such location constitutes implied consent to be searched under an exception to the warrant requirement.

434.3 SPD COMMON LAW RIGHT OF INQUIRY – CONSENT SEARCH REPORT

A **COMMON LAW RIGHT OF INQUIRY – CONSENT SEARCH REPORT** shall be completed for all Level 2 investigative encounters based on founded suspicion.

- (a) A separate **COMMON LAW RIGHT OF INQUIRY – CONSENT SEARCH REPORT** shall be completed for EACH person who is the subject of a Level 2 investigative encounter based on founded suspicion.

The **COMMON LAW RIGHT OF INQUIRY – CONSENT SEARCH REPORT** is not prepared for a Level 1 encounter, unless a Level 1 encounter escalates to a Level 2 investigative encounter. In those cases, a notation on the **COMMON LAW RIGHT OF INQUIRY – CONSENT SEARCH REPORT** shall be made, indicating that the incident began as a Level 1 encounter.

The **COMMON LAW RIGHT OF INQUIRY – CONSENT SEARCH REPORT** is not prepared when an officer makes a summary arrest for an offense/crime or issues a summons for an observed violation, unless the suspect was initially approached for an investigation into a Level 2 investigative encounter based on founded suspicion. In those cases, a **COMMON LAW RIGHT OF INQUIRY – CONSENT SEARCH REPORT** shall be completed in addition to all other paperwork normally associated with an arrest or summons.

434.4 CONSENT SEARCHES - PROCEDURE

Any officer who has, at a minimum, founded suspicion of criminality, may approach a person or persons and request consent to search. Consent must be voluntarily given. When an officer requests consent to search, they shall:

- (a) Ask for consent to search using plain and simple language, delivered in a non-threatening manner, and without promises.
- (b) Make clear that the search will not occur if the person does not consent.
 - 1. For example, you may ask the following: *"I can only search you, if you consent. Do you understand? May I search you?"*
- (c) If a person does not consent to a search, a consent search cannot be conducted.
- (d) Utilize interpretation services, such as bilingual officers and telephonic interpretation, when seeking consent to search from persons with limited English proficiency.

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- (e) Video record the consent request and the person's response, if equipped with a body worn camera. If the officer is not equipped with a body worn camera, a consent to search form shall be completed by the officer requesting consent, and signed by any person granting consent. In any instance where a person grants verbal consent, but refuses to sign a consent to search form, the officer requesting consent must document the consent and the person's refusal to sign the form.
- (f) Offer the person who is the subject of the consent request a **RIGHT TO KNOW BUSINESS CARD** as outlined in the **GENERAL PUBLIC CONTACT PROCEDURE** (above), and provide information on how to obtain a copy of the video or written record of the request and search (if performed).
 - 1. A business card does not need to be provided if the encounter ends in an arrest or a summons, unless a **RIGHT TO KNOW BUSINESS CARD** is requested.
- (g) If the consent to search request was part of a Common Law Right of Inquiry (Level 2 Encounter) the officer shall document the time, location, and date of such request, the response (consent or refusal), and search (if performed), and the apparent race, ethnicity, gender and age of the person who was the subject of such request and search, as well as the officer's name, IBM number, and current assignment on the **COMMON LAW RIGHT OF INQUIRY – CONSENT SEARCH REPORT**.
 - 1. A separate **COMMON LAW RIGHT OF INQUIRY – CONSENT SEARCH REPORT** must be completed for each person from whom a consent to search was requested.
 - 2. If the consent to search request was part of a Terry Stop (Level 3 Encounter), follow the guidance below, under **SPD STOP REPORT - LEVEL 3 ENCOUNTERS**.

These consent search procedures apply to all searches (persons, vehicles, property, homes, etc.) that are based solely on a person's consent to search, and do not apply to searches conducted pursuant to a search warrant or any exception to the search warrant requirement.

434.5 SPD STOP REPORT – LEVEL 3 ENCOUNTERS

A **SPD STOP REPORT** shall be completed for all Level 3 Encounters (Terry Stops), traffic stops, and in all instances when a person or persons are frisked. The appropriate sections of the **SPD STOP REPORT** shall be filled out for EACH person stopped and/or frisked.

If a request for consent to search is made as part of a Level 3 encounter, including traffic stops, the above procedure regarding **CONSENT SEARCHES** shall apply, except that officers shall document the request(s) on a **SPD STOP REPORT** in the appropriate places.

The **SPD STOP REPORT** is not prepared for a Level 1 or Level 2 encounter, unless the encounter escalates to a Level 3 Terry Stop. In those cases, a notation on the **SPD STOP REPORT** shall be made, indicating that the incident began as a Level 1 or 2 encounter.

The **SPD STOP REPORT** is not prepared when an officer makes a summary arrest for an offense/ crime or issues a summons for an observed violation, unless the suspect was initially detained for investigation in a Level 3 Encounter, including traffic stops. In those cases, a **SPD STOP**

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REPORT shall be completed in addition to all other paperwork normally associated with an arrest or summons.

434.6 DEPARTMENT REPORTING REQUIREMENTS

- (a) On a quarterly basis, the Syracuse Police Department shall post on its website a report of the following data:
 - 1. The total number of consent searches conducted during the preceding quarter, disaggregated by:
 - (a) Apparent race/ethnicity
 - (b) Apparent gender
 - (c) Apparent age (of the person searched)
 - 2. The total number of instances where an officer sought to obtain a consent to search, but did not obtain consent, disaggregated by:
 - (a) Apparent race/ethnicity
 - (b) Apparent gender
 - (c) Apparent age (of the person from whom consent was sought)
- (b) Within 30 days of the end of every quarter, the Chief of Police shall submit to the Common Council and the Mayor, and post to the department website, a report containing the following information concerning investigative encounters conducted by officers for the previous quarter:
 - 1. The total number of level one investigative encounters based on an objective credible reason that escalated to a level two or three investigative encounter;
 - 2. The total number of level two investigative encounters based on founded suspicion; and
 - 3. The total number of level three investigative encounters based on reasonable suspicion.
- (c) This information shall be disaggregated by district and further disaggregated by:
 - 1. The apparent race/ethnicity, gender, and age of the person involved;
 - 2. The number of persons from whom an officer requested consent to search, further disaggregated by whether consent was granted or declined;
 - 3. The number of persons arrested or issued a summons;
 - 4. The factors leading to the investigative encounter;
 - 5. Whether a use of force incident occurred in connection with the encounter.
- (d) This information shall be stored permanently and shall be accessible from the department's website, and shall be provided in a format that permits automated processing. Each report shall include a comparison of the current reporting period to the prior four reporting periods, where such information is available.