Chapter 1
Investigative Detentions

Fundamentals

Defined: An investigative detention is a temporary seizure of a suspect for the purpose of determining whether (1) there was probable cause to arrest him, (2) further investigation would be necessary, or (3) the officers' suspicions were unfounded.¹


Other types of detentions

Traffic stops: A traffic stop is a car stop based on probable cause or reasonable suspicion that the driver committed a traffic infraction. See Chapter 3 TRAFFIC STOPS.

Special needs detentions: A special needs detention is a temporary seizure of a person for a non-investigative purpose. See Chapter 2 SPECIAL NEEDS DETENTIONS.

Detentions on school grounds: See Chapter 2 SPECIAL NEEDS DETENTIONS.

Detentions pending issuance of search warrant: See Chapter 28 EXECUTING SEARCH WARRANTS (Securing the Premises, Detentions).

Detentions of property: Officers may “detain” (i.e., temporarily seize) property for a reasonable time if there is reasonable suspicion to believe it is evidence or that it contains evidence; e.g., officers detained a suitcase while seeking a warrant to search it.² A lawful detention of property may become unlawful if officers waited an unreasonable amount of time before applying for a search warrant.³

Detentions of mail: Mail may be detained without reasonable suspicion if the detention did not significantly interfere with its timely delivery.⁴

Detentions for parking violations: See Chapter 3 TRAFFIC STOPS (Grounds to stop).

When a Suspect Is “Detained”

The “free to terminate” test: A detention results if a reasonable person in the suspect’s position would have believed he was not free “to decline the officers’ requests or otherwise terminate the encounter.”⁵ Also see Chapter 4 INVESTIGATIVE CONTACTS.

Exceptions

Vehicle passengers: Even if they reasonably believed they were free to leave, the passengers in a stopped car are automatically detained because officers have the authority to restrict their movements for officer-safety purposes.⁶

Noncompliant suspects: A suspect who flees or otherwise refuses to comply with an officer’s instructions is not detained until he submits or is apprehended.⁷

Examples

Foot pursuit: Suspect ran when officers ordered him to stop.⁸
Vehicle pursuit: Suspect led officers on a car chase.⁹
Suspect kept walking: Suspect kept walking after he was ordered to stop.¹⁰
Suspect only briefly submitted: The suspect briefly stopped or submitted but then ran or refused to comply with the officers’ commands.¹¹
Discarded evidence: Because a fleeing suspect is not detained, evidence he discards will not be suppressed on grounds that officers lacked grounds to detain him.12

Flight providing grounds to detain: Although flight will not automatically provide officers with grounds to detain, it is a highly suspicious circumstance. See Chapter 31 PROBABLE CAUSE TO ARREST (Running from officers).

Detention Procedure

Generally: Although the procedure may vary as it becomes necessary to cope with changing circumstances, it must initially be limited to (1) maintaining officer safety, and (2) confirming or dispelling the officers' suspicions.

De facto arrests: A detention will be deemed a de facto arrest if (1) officer-safety precautions were unnecessary or excessive, (2) the officers did not carry out their duties in a reasonable manner, or (3) the officers unnecessarily transported the detainee to another location. Like any arrest, a de facto arrest is illegal if officers lacked probable cause.13

Misleading terminology: The term “de facto arrest” can be misleading because it might be interpreted to mean that an arrest results whenever officers take action that is more consistent with an arrest than a detention; e.g., handcuffing. As discussed below, however, such actions will not ordinarily convert a detention into an arrest unless they were unreasonable. In other words, the use of arrest-like measures will not convert the encounter into a de facto arrest if there was an overriding need.14

How the facts are evaluated: In determining whether officers carried out their duties in a reasonable manner, the courts apply the following principles:

No “least intrusive means” test: In the past, some courts would rule that a detention was unlawful if the officers failed to employ the least intrusive means of pursuing their objectives. The “least intrusive means” test has been abrogated.15 Instead, a detention may be invalidated only if the officers acted unreasonably in failing to perceive and implement a less intrusive alternative.16

No unrealistic second-guessing: The courts evaluate the situation by applying common sense and avoiding unrealistic second-guessing. This is because most detentions are swiftly developing, and because a “creative” judge “can almost always imagine some alternative means by which the objectives of the police might have been accomplished.”17

Training and experience: A court may consider the officers’ interpretation of the circumstances in light of their training and experience. See Chapter 29 PRINCIPLES OF PROBABLE CAUSE (How the Facts Are Analyzed, Training and experience).

Totality of circumstances: In determining whether the officers acted in a reasonable manner, the courts will consider the totality of circumstances.18

Use of force: Because officers are expected to take “unquestioned command” of detentions,19 the use of force to obtain control over a detainee will not convert the detention into a de facto arrest if the force was reasonably necessary.20

Relevant circumstances: Relevant circumstances include “the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officers or others, and whether he is actively resisting or attempting to evade arrest by flight.”21

Felony car stops: See “Officer-safety precautions” (Felony car stops), below.

Gunpoint: See “Officer-safety precautions” (Gunpoint), below.


Arrest for Penal Code § 148: If force was necessary, officers will often have grounds to arrest the detainee for a violation of Penal Code § 148.22
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Officer-safety precautions

**Generally:** Utilizing one or more of the following officer-safety precautions will not convert a detention into a de facto arrest if it was reasonably necessary.23

**Detention dangers:** In determining whether officer-safety precautions were reasonably necessary, the courts may consider that an officer who is detaining a suspect is “particularly vulnerable in part because a full custodial arrest has not been effected, and the officer must make a quick decision as to how to protect himself and others from possible danger.”24

**Loosening restrictions:** In the past, it was sometimes argued that most officer-safety precautions, even if reasonably necessary, were too closely associated with arrests to be justified by anything less than probable cause. But changes in our culture, especially the prevalence of weapons and violence among the criminal element, have made these arguments untenable.25

**Keep hands in sight:** Officers may order the detainee to remove his hands from his pockets and otherwise keep his hands in sight.26

**Lie on the ground:** See “Controlling the detainee’s movements,” below.

**Pat searching:** Officers may pat search a detainee if they reasonably believed he was armed or dangerous. See Chapter 10 PAT SEARCHES.

**Handcuffing**

**Good cause required:** Handcuffing is permitted if there was good cause.27

- **Examples:** See this endnote for examples of good cause.28

**Handcuffing after pat search:** Because pat searches are fallible, handcuffing will not be deemed unwarranted merely because a weapon was not found during an earlier patdown.29

**“You’re not under arrest”:** In close cases it is relevant that the officers told the detainee that, despite the handcuffs, he was not under arrest and that the handcuffs were only a temporary measure for everyone’s safety.30

**Limitations**

- **Tight handcuffs:** Handcuffs must not be applied more tightly than necessary.31

- **Duration:** Handcuffs must not be applied for an unreasonable length of time.32

**Gunpoint:** Although a detention at gunpoint is a strong indication that the detainee was under arrest, such a safety measure will not convert a detention into a de facto arrest if (1) the precaution was reasonably necessary, and (2) the weapon was promptly reholstered when it was safe to do so.33

**Questions pertaining to officer safety:** Officers may ask questions that are reasonably necessary for their safety if the questioning was brief and to the point; e.g., officers may ask the detainee if he possesses any weapons or drugs, or whether he is on probation or parole.34

**Warrant checks:** Officers may run a warrant check on the detainee because (1) warrant checks further the public interest in apprehending wanted suspects, and (2) they further officer safety as officers will be better able to determine if the detainee is apt to resist.35

**Additional precautions when detainee is inside a vehicle:** In addition to the above, officers who have detained an occupant of a vehicle may do the following:

- **High-risk (“felony”) car stops**

  - **Based on probable cause:** When officers utilize high-risk or felony car stop procedures, they will usually have probable cause to arrest one or more of the
occupants for a serious crime. If so, it would be irrelevant that the detention had been converted into a de facto arrest.

**Based on reasonable suspicion:** If officers have only reasonable suspicion, a high-risk stop is permissible if they had reasonable suspicion that the occupants were armed or that they otherwise presented a substantial threat.\textsuperscript{36}

**Put hands on dash:** Officers may order all occupants of a stopped vehicle to put their hands on the dash.\textsuperscript{37}

**Opening vehicle door:** If reasonably necessary, officers may open the door of a stopped vehicle to briefly view the occupants.\textsuperscript{38} They may also use a flashlight or spotlight to illuminate the interior.\textsuperscript{39}

**Protective car searches:** Officers may search the passenger compartment for weapons if they reasonably believed that a weapon—even a legal weapon—was located there. See Chapter 13 *Vehicle Searches* (Protective Searches).

**Controlling the detainee’s movements:** Throughout the course of detentions and traffic stops, officers may control the movements of the detainee and, in the case of car stops, any other occupants of the vehicle.\textsuperscript{40} This is permitted because (1) it enables officers to conduct the detention in an orderly manner, and (2) it is minimally intrusive. Consequently, depending on the circumstances, officers may take the following precautions:

- **Get out / Stay inside:** If the detainee was an occupant of a vehicle, officers may order him and any other occupants to remain inside,\textsuperscript{41} exit the vehicle\textsuperscript{42} or, if the occupant had already exited, to get back inside.\textsuperscript{43}

- **Sit or stand in a certain place:** Officers may order the detainee and his companions to sit in a certain place; e.g., on the ground, on the curb, on the push bar of a patrol car.\textsuperscript{44}

- **Separate detainees:** If officers have detained two or more suspects, they may separate them for officer-safety purposes and to ensure that the answers by one of the detainees will not influence the others.\textsuperscript{45}

- **Lie on the ground:** Commanding a detainee to lie on the ground is much more intrusive than merely ordering him to stand or sit on the ground. Consequently, such a precaution is permitted only if it was warranted under the circumstances.\textsuperscript{46}

- **Confine in patrol car:** A detainee may be confined inside a patrol car if there was reason to do so; e.g., the detention will be prolonged, detainee was rowdy, officers needed to focus their attention on another matter.\textsuperscript{47}

**Identifying the detainee:** Officers may take steps to obtain “satisfactory” identification from the detainee and to confirm his identity.\textsuperscript{48}

**What is “satisfactory” ID?**

- **Driver’s license:** A current driver’s license is presumptively satisfactory ID.\textsuperscript{49} Exception: there was reason to believe the license was forged or altered.\textsuperscript{50}

- **Functional equivalent of a driver’s license:** A document will be deemed the functional equivalent of a driver’s license if it contained all of the following: the detainee’s photo, brief physical description, signature, current mailing address, serial numbering, and information establishing that the document is current.\textsuperscript{51}

- **Other documents:** Other documents are not presumptively satisfactory ID, which means that officers may exercise discretion in making the determination.\textsuperscript{52}

- **Verbal identification:** A suspect does not satisfactorily identify himself by stating a name.\textsuperscript{53} But officers may exercise discretion in determining whether verbal identification is sufficient.\textsuperscript{54}
Question companions: Officers may question the detainee’s companions to confirm his identity.

Search for ID

Search wallet: If the detainee denies having ID but is carrying a wallet, officers may either (1) order him to look through it while they watch to determine if it contains ID, or (2) search it themselves.

No pat search: Officers may not pat search the detainee to determine if he has a wallet or ID.

Search vehicle: See Chapter 13 VEHICLE SEARCHES (ID and Registration Searches).

Refusal to ID: If the detainee refuses to identify himself, officers may do the following:

Expand detention: Officers may expand the scope of the detention to ascertain and confirm his identity.

Arrest detainee

Arrest for Penal Code § 148

Refusal to identify: A detainee who refuses to identify himself, or refuses to show his ID, would seem to be in violation of Penal Code § 148 because he is intentionally delaying the officers in the performance of their duties.

False name: A violation of Penal Code §§ 148(a)(1) and 148.9(a) will result if the detainee gave a false name.

False DOB: A violation of Penal Code § 148.9 results if the detainee lied about his DOB, even if he gave his true name.

Arrest for Vehicle Code § 40302(a): A traffic violator who fails to present satisfactory ID may be arrested under Vehicle Code § 40302(a). See Chapter 3 TRAFFIC STOPS (Procedure, Obtaining ID).

Arrest for Penal Code § 853.6(i)(5): A person arrested for a misdemeanor who could be cited and released may be arrested if he could not provide satisfactory evidence of identification.

Refusal as probable cause factor: A detainee’s refusal to identify himself is a relevant circumstance in determining whether there is probable cause to arrest him for the crime under investigation. See Chapter 31 PROBABLE CAUSE TO ARREST (Refusal to Cooperate, Refusal to identify).

Identify vehicle passengers: Although officers may request all undetained vehicle passengers to identify themselves, the question arises: Absent some official need to obtain a passenger’s ID, do officers have a right to do so? This issue is unsettled.

Conducting the investigation

Fundamentals

Stay focused on objective: The scope of the detention must be “carefully tailored” or “focused,” meaning that officers may ordinarily do only those things that are reasonably necessary to protect themselves and complete their investigation.

Pursue objectives in reasonable manner: Even if the officers’ investigation was properly focused, a detention may be invalidated if they did not pursue their objectives in a reasonable manner.

Length of detentions: There is no time limit, and officers are not required to “move at top speed.” Instead, they must carry out their duties diligently in light of the actions of the detainee or other circumstances over which they had little control.

Examples: See this endnote for examples.
When the clock stops: The clock stops running when officers develop probable cause to arrest the detainee, or when they convert the detention into a contact. See “Converting Detentions Into Contacts,” below.

Questioning: The most direct and effective way for officers to confirm or dispel their suspicion is usually to question the detainee.

Miranda: Although detainees are not free to leave, they are not “in custody” for Miranda purposes unless the circumstances generated the degree of compulsion to speak that the Miranda procedure was designed to alleviate. See Chapter 42 MIRANDA: WHEN COMPLIANCE IS REQUIRED (Questioning detainees).

Not required to answer: Detainees are not required to answer investigative questions.

Off-topic questioning (The “measurably extend” test): Questioning about matters that do not pertain directly to officer safety or to the crime under investigation will not invalidate a detention so long as the questioning did not “measurably extend” the detention.

Police dogs: To find evidence

Delay caused by: Officers may walk a K9 around the detainee, his vehicle, or containers in his possession if it does not measurably extend the duration of the stop.

Not a “search”: Utilizing a K9 to detect drugs or explosives in a place in which the officers have a right to be does not constitute a search; i.e., sniffing does not infringe on a reasonable expectation of privacy. See Chapter 59 STANDING (Police dogs: To find evidence).

Dog touches vehicle: A vehicle “search” does not result merely because the dog put his paws on the vehicle.

Dog jumps in: The Tenth Circuit has ruled that the instinctive action of a dog jumping into an open part of a car he is sniffing does not violate the Fourth Amendment.

K9 assists in consent search: Officers who have obtained consent to search for drugs or explosives may use a K9 to help with the search unless the suspect objects. See Chapter 9 CONSENT SEARCHES (Scope of Consent, Searches conducted by K9s).

K9 alert establishing probable cause: An alert by a K9 may constitute probable cause to search the location to which he alerted if there is reason to believe the K9 is reliable. See Chapter 32 PROBABLE CAUSE TO SEARCH (Existence inferred from another item or condition, K9 alert > Drugs).

Warrant checks: Warrant checks may serve both an investigative and officer-safety measure. See “Officer-safety precautions” (Warrant checks), above.

Showups: See Chapter 51 LINEUPS AND SHOWUPS (Showups).

Transporting the detainee: A detention will ordinarily become a de facto arrest if the detainee was transported from the scene of the detention without his consent; e.g., transport to a police station or crime scene. This is because the act of moving the detainee to another location is much more akin to an arrest than a detention, plus there are usually less intrusive means of accomplishing the officer’s objective. Exceptions:

Good cause: Transporting the detainee is permissible if there was probable cause to believe it was necessary; e.g., a hostile crowd had gathered; a showup was needed but the victim was injured and remained at the crime scene.

Short trip: There is authority for transporting a detainee a short distance if it would help resolve the investigation.
Consent searches: Officers may seek the detainee’s consent to search. See Chapter 9 CONSENT SEARCHES.

Field contact cards: Officers may briefly prolong a detention to complete a field contact card.  

Fingerprinting the detainee: Officers may fingerprint the detainee if (1) they reasonably believed that fingerprinting would help confirm or dispel their suspicion, and (2) the procedure was carried out promptly.  

Warrant for fingerprinting? The U.S. Supreme Court has indicated that, if the above requirements are met, a judge might issue a warrant—based on reasonable suspicion—authorizing the removal of the detainee to a police station for fingerprinting.  

Photographing the detainee  
Consensual: The detainee may be photographed if he consented.  
Nonconsensual: We are not aware of any cases in which the court ruled on whether a detainee could be photographed if he did not consent. But because taking a photo is, if anything, less intrusive than taking fingerprints, it is likely that this procedure is lawful if, as with fingerprinting, the officers reasonably believed that the photo would help confirm or dispel their suspicion, and the procedure did not unduly prolong the detention.  

Search for discarded evidence: If officers reasonably believed that the detainee had discarded evidence before he was stopped, they may prolong the detention for a reasonable time to search for it.  

Obtaining information from others: In attempting to confirm or dispel their suspicions, officers may need to speak with victims, witnesses, dispatchers, or other officers by phone or radio; e.g., to verify information furnished by the detainee or to determine whether property in the detainee’s possession had been reported stolen. A delay for this purpose is permissible if officers were diligent.  

Terminating the detention: Officers must terminate the detention and permit the detainee to leave within a reasonable time after (1) they determine that grounds for the detention did not exist; (2) they determine that further detention would be unlikely to confirm or dispel their suspicions; or (3) in the case of traffic stops, when they have issued a citation or warning.  

Converting Detentions Into Contacts: Officers may be able to eliminate the time and scope limitations on detentions by converting them into contacts. To do so, they must make it clear to the suspect that he is now free to go, as follows:  

Return documents: All documents and property obtained from the suspect must be returned to him.  

“Free to go”: Although not technically a requirement, officers should tell the suspect that he may leave. However, telling a suspect that he is free to go will have little significance if there were other circumstances that reasonably indicated he could not leave.  

Officers’ candor: The courts sometimes note whether the officers explained to the suspect why they wanted to continue to talk with him, why they were seeking consent to search, or why they wanted to run a warrant check, and so forth. These explanations may help convert the detention into a contact because such openness is more consistent with a contact than a detention, and it would indicate to the suspect that the officers were seeking his voluntary cooperation. See Chapter 4 INVESTIGATIVE CONTACTS (Relevant Circumstances, Officer’s attitude, Candor).