

Chapter 1

Investigative Detentions

The Basics

“Investigative detention” defined: An investigative detention is a temporary seizure of a suspect for the purpose of determining, (1) whether there is probable cause to arrest him, (2) whether further investigation is necessary, or (3) whether the officer’s 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 on school grounds).

Detentions pending issuance of search warrant: Officers may detain a suspect pending issuance of a search warrant if, (1) there is probable cause for the warrant; (2) probable cause to arrest the suspect would exist if the sought-after evidence was found during the search; and (3) officers were diligent in seeking and executing the warrant.²

Detentions of property: Officers may “detain” (temporarily seize) property for a reasonable period of time if there is reasonable suspicion to believe it is, or contains, evidence of a crime; e.g., officers detained a suitcase while seeking a warrant to search it.³

Detentions of mail: Mail may be detained without reasonable suspicion if the detention does not significantly interfere with its timely delivery in the normal course of business.⁴

Detentions for parking violations: If officers have probable cause to cite the driver of a car for a parking violation, they may detain him for the purpose of writing a citation or investigating the matter.⁵

When a suspect is “detained”: A suspect is detained if a reasonable person in his position would have believed he was not free “to decline the officers’ requests or otherwise terminate the encounter.” See Chapter 4 INVESTIGATIVE CONTACTS (Free to terminate test).

Grounds to detain: Grounds to detain exist as follows:

Reasonable suspicion: Officers may detain a person if they reasonably believe the person was committing a crime, was about to commit one, or had recently done so.⁶ See Chapter 30 PRINCIPLES OF PROBABLE CAUSE and REASONABLE SUSPICION, Chapter 32 PROBABLE CAUSE TO ARREST.

Passenger in stopped car: The passengers in a stopped car are automatically detained—lawfully detained—even if they reasonably believed they were free to leave. See Chapter 3 TRAFFIC STOPS (Status of passengers), and Chapter 61 STANDING (Cars, Passengers).

Detention Procedure

Generally

What officers may do: Officers may do only those things that are reasonably necessary to, (1) investigate the matter, and (2) ensure their safety.⁷

Increased scope: If circumstances change, officers may respond accordingly.⁸

De facto arrests

Defined: A detention becomes a de facto arrest if its scope or intrusiveness were, (1) beyond that which is associated with investigative detentions, and (2) unnecessary under the circumstances.⁹

Consequences: A de facto arrest is an illegal arrest unless probable cause existed.¹⁰

No unrealistic second-guessing: A detention does not become a de facto arrest merely because it could have been completed faster or less intrusively. What counts is whether the officers acted unreasonably, keeping in mind that most detentions are swiftly developing, and that a creative judge “can almost always imagine some alternative means by which the objectives of the police might have been accomplished.”¹¹

No “least intrusive means” test: In the past, some courts ruled that a de facto arrest would result if officers failed to employ the least intrusive means of pursuing their investigation. That test has been abrogated.¹²

Duration: Officers who have detained a suspect must carry out their duties diligently.¹³

No time limits: There is no maximum time limit.¹⁴

Delay attributable to detainee, other circumstances: Delays resulting from the actions of the detainee or from circumstances over which the officers had no control will not result in a de facto arrest if the officers were diligent in their response.¹⁵

Delay to investigate another crime: If, during the course of a detention, officers develop reasonable suspicion to believe that the detainee committed another crime, they may prolong the detention to investigate the matter.¹⁶

Terminating the detention: Officers must promptly terminate the detention when they have completed their duties.¹⁷

Force: Use of force will not transform a detention into a de facto arrest if the force was reasonably necessary.¹⁸ 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.”¹⁹

Arrest for 148: If force was reasonably necessary, the detainee will be arrestable for a violation of Penal Code § 148.²⁰

Restraint by police dog: If reasonably necessary, officers may use a police dog to restrain a resisting detainee.²¹ But, again, if force was necessary, the detainee would be arrestable.

Officer-safety precautions

Detentions are dangerous: Detentions are especially dangerous to the officers because they remain “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.”²²

Precautions during all detentions: Officers may take “unquestioned command” of the detention²³ which, depending on the circumstances, may include the following:

Keep hands in sight: Officers may order the detainee to remove his hands from his pockets, and keep his hands in sight.²⁴

Handcuffing: Detainees may be handcuffed only if reasonably necessary; e.g., detainee was combative, a flight risk, detainee possessed ammunition, detention for violent crime.²⁵

Tight handcuffs: Handcuffs must not be applied more tightly than necessary.²⁶

Duration: Handcuffs must not be applied for an unreasonable length of time.²⁷

Routine handcuffing: Because handcuffing must be reasonable under the circumstances, officers may not handcuff detainees as a matter of routine.²⁸

Drawing a gun: An officer's act of drawing a gun on the detainee will not convert the detention into a de facto arrest if, (1) the precaution was reasonably necessary, and (2) the officer reholstered the weapon when it was safe to do so.²⁹

Pat search: Officers may pat search the detainee if they reasonably believed he was armed or dangerous. See Chapter 11 PAT SEARCHES.

Confine in patrol car: The detainee may be confined in a patrol car if necessary.³⁰

Warrant checks: Warrant checks may be deemed an officer-safety measure. See "Conducting the investigation" (Warrant checks), below.

Questions related to officer safety: Officers may ask questions that are reasonably necessary for their safety if the questioning was brief and to the point.

Weapons? Parole? Officers may ask the detainee if he has any weapons in his possession, or if he is on probation or parole.³¹

Drugs? Asking the detainee if he possesses drugs is arguably relevant to officer safety because of the close connection between drugs and weapons, and because drug users tend to be unpredictable.³²

Unnecessary questioning: If the connection between the question and officer safety was farfetched, or if officers asked a series of exploratory questions, a court might rule the stop was unduly prolonged.³³

Precautions during car stops: Additional precautions: The following additional precautions may be taken if the detainee was in a vehicle:

Felony car stops: Officers may implement felony car stop procedures if they reasonably believed the detainee was armed or otherwise presented a substantial threat of violence; e.g., detention of murder suspect.³⁴

Put hands on dash: Officers may order the occupants to put their hands on the dash.³⁵

Opening door: If reasonably necessary, officers may open a door to briefly view the occupants.³⁶

Flashlighting the interior: Officers may use a flashlight or spotlight to illuminate the interior.³⁷

Positioning the occupants

Stay inside: Officers may order the occupants to stay inside.³⁸

Exit: Officers may order the occupants to exit the vehicle.³⁹

Get back inside: Officers may order the occupants to return to the vehicle.⁴⁰

Controlling occupants: If the occupants have been ordered out, officers may order them to stand or sit at a certain place (together or separated).⁴¹ If the purpose of the command to exit was to conduct a search of the car, the driver and passengers may be detained until the search is completed.⁴²

Protective search of vehicle: Officers may conduct a protective search of the passenger compartment if they reasonably believed there was a weapon inside. See Chapter 15 VEHICLE SEARCHES (Protective car searches).