

# Chapter 1

## Investigative Detentions

### Fundamentals

**“Investigative detention” defined:** An investigative detention is a temporary seizure of a suspect for the purpose of determining (1) if there is probable cause to arrest, (2) if further investigation is necessary, or (3) if the officers’ suspicions were unfounded.<sup>1</sup>

**Summary of requirements:** There are three requirements for conducting detentions:

- (1) **Reasonable suspicion:** Officers must have had reasonable suspicion to detain. See Chapter 31 PROBABLE CAUSE TO ARREST (Reasonable suspicion).
- (2) **Scope of detention:** Although the scope of the detention may expand as the result of changed circumstances, the initial scope must be limited to maintaining officer safety and investigating the circumstances upon which reasonable suspicion was based.
- (3) **Utilize reasonable means:** Even if the scope of the officers’ investigation was properly focused, a detention may be invalidated if they did not pursue their objectives in a reasonable manner; e.g., officers investigated matters for which reasonable suspicion did not exist. See Detention Procedure, below.

**Detentions vs. de facto arrests:** If a detention is deemed a de facto arrest, it becomes unlawful unless the officers had probable cause.

**Defined:** A detention will be deemed a de facto arrest if any of the following occurred:

**Unnecessary officer-safety precautions:** Officer-safety precautions were unnecessary or excessive. See Officer-safety precautions, below.

**Unduly prolonged:** The detention was unduly prolonged.

**Unnecessary transport:** The detainee was unnecessarily transported to another location. See Detention Procedure, Transporting the detainee, below.

**Misleading terminology:** The term “de facto arrest” may 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, such as handcuffing the detainee. As discussed below, however, such actions will not convert a detention into an arrest unless they were unnecessary under the circumstances.

**Detentions based on reasonable suspicion plus:** Some courts have permitted detentions that had just reached the level of a de facto arrest where the level of suspicion had almost reached probable cause.<sup>2</sup>

### **Other types of detentions**

**Traffic stops:** A traffic stop is a car stop that is based on probable cause or reasonable suspicion that the driver committed a traffic infraction. Also 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:** See Chapter 28 EXECUTING SEARCH WARRANTS.

**Detentions of property:** Officers may “detain” (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.<sup>3</sup>

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

**Detentions for parking violations:** If officers have grounds to cite a driver for a parking violation, they may detain him for the purpose of issuing a citation.<sup>5</sup>

### **When a Suspect Is “Detained”**

**“Free to terminate” test:** An encounter is deemed a detention if a reasonable innocent person in the suspect’s position would not have felt free “to decline the officers’ requests or otherwise terminate the encounter.”<sup>6</sup>

**Relevant circumstances:** The circumstances that are relevant in determining whether a suspect had been detained are covered in Chapter 4 INVESTIGATIVE CONTACTS (Key Indicators).

#### **Exceptions**

**Vehicle passengers:** The passengers in a stopped car will be deemed “detained” even if a reasonable person in their position would have felt free to leave. This is because officers have the authority to restrict their movements for officer-safety purposes.<sup>7</sup> Also see Chapter 59 STANDING (Motor vehicles, Passengers).

**Suspect fled:** Although a fleeing suspect or a suspect who otherwise refuses to comply with an officer’s instructions would not feel free to terminate the encounter, a detention will not result until he submits or is apprehended.<sup>8</sup>

**Examples:** A seizure would not result if the suspect did any of the following:

**Foot pursuit:** Suspect ran when officers ordered him to stop.<sup>9</sup>

**Vehicle pursuit:** Suspect led officers on a car chase.<sup>10</sup>

**Suspect kept walking:** Suspect kept walking after being ordered to stop.<sup>11</sup>

**Suspect submitted, then fled:** The suspect initially submitted but then ran or refused to submit or comply with the officers’ commands.<sup>12</sup>

**Suspect discarded evidence:** Because a fleeing suspect is not detained, evidence he discards while in flight will not be suppressed on grounds that officers lacked grounds to detain him.<sup>13</sup>

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

**Detention Procedure:** Detentions must be conducted in a reasonable manner,<sup>14</sup> as follows:

#### **Fundamentals**

**No “least intrusive means” test:** In the past, some courts would rule that a de facto arrest resulted if officers failed to employ the least intrusive means of pursuing their objectives. The “least intrusive means” test has been abrogated.<sup>15</sup> Instead, a detention may be invalidated only if the officers were negligent in failing to discern and implement a less intrusive alternative.<sup>16</sup>

**Common sense:** The circumstances are evaluated by applying common sense, not hypertechnical analysis.<sup>17</sup>

**No unrealistic second-guessing:** In determining whether the officers conducted a detention in a reasonable manner, a court must not engage in 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.”<sup>18</sup>

**Training and experience:** A court may consider the officers’ interpretation of the circumstances in light of their training and experience.<sup>19</sup>

**Totality of circumstances:** In determining whether the officers acted in a reasonable manner, the courts will consider the totality of circumstances surrounding the detention.<sup>20</sup>

**Using force to detain:** The use of force to effect a detention will not transform it into a de facto arrest if the force was reasonably necessary.<sup>21</sup>

**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.”<sup>22</sup>

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

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

**Tasers:** See Chapter 5 ARRESTS (Use of Force, Intermediate force).

**Arrest for Pen. Code §148:** If force was necessary, officers will often have grounds to arrest the detainee for Pen. Code § 148.<sup>23</sup>

## Officer-safety precautions

### Fundamentals

**“Unquestioned command”:** Officers are authorized to take “unquestioned command” of detentions.<sup>24</sup>

**Reasonably necessary precautions:** Officers may utilize whatever officer-safety precautions are reasonably necessary under the circumstances.<sup>25</sup>

**Detentions are dangerous:** 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.”<sup>26</sup>

**Loosening restrictions:** In the past, it was sometimes argued that most officer-safety precautions 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.<sup>27</sup>

**Keep hands in sight:** Officers may order the detainee to remove his hands from his pockets and otherwise keep his hands in sight.<sup>28</sup>

**Put hands on dash:** Officers may order the occupants of a stopped vehicle to put their hands on the dash.<sup>29</sup>

**Exit car:** See Controlling detainee’s movements, below.

**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 curb or some other location. Consequently, such a precaution is permitted only if it was warranted under the circumstances.<sup>30</sup>

**Controlling detainee’s movement:** See Controlling the detainee’s movement, below.

**Questions re officer safety:** See Conducting the investigation (Questioning, Questions pertaining to officer safety), below.

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

**Handcuffing:** Although handcuffing often “minimizes the risk of harm to both officers and occupants,”<sup>31</sup> officers may not handcuff detainees as a matter of routine.<sup>32</sup>

**Good cause required:** Handcuffing is permitted only if there was good cause.<sup>33</sup>

❖ **Examples:** See this endnote for examples of good cause.<sup>34</sup>

**Handcuffing after pat search:** Because pat searches are fallible, handcuffing will not be invalidated merely because a weapon was not found during an earlier pat down.<sup>35</sup>

**Telling detainee he is 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.<sup>36</sup>

#### **Limitations**

**Tight handcuffs:** Handcuffs must not be applied more tightly than necessary.<sup>37</sup>

**Duration:** Handcuffs must not be applied for an unreasonable length of time.<sup>38</sup>

**Gunpoint:** Although a detention at gunpoint is a strong indication that the detainee was under arrest, the courts have consistently ruled that 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 reholstered after it was safe to do so.<sup>39</sup>

#### **Felony car stops**

**Based on probable cause:** When officers utilize felony car stop procedures, they 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 felony stop is permissible if they reasonably believed that the occupants were armed or that they otherwise presented a substantial threat.<sup>40</sup>

**Warrant checks:** Because a detainee who is wanted on an arrest warrant necessarily poses an increased threat to officers, warrant checks are permitted if they do not unduly prolong the detention. See Conducting the investigation (Warrant checks), below.

**Open the door:** If necessary, officers may open the door of a stopped vehicle to briefly view the occupants,<sup>41</sup> and they may use a flashlight or spotlight to illuminate the interior.<sup>42</sup>

**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 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.<sup>43</sup> This is permitted because (1) it helps enable officers to conduct the detention in an orderly manner, and (2) it is a minimally-intrusive officer-safety measure.

**Get out / Stay inside:** If the detainee was an occupant of a vehicle, officers may order him and any other occupants to remain inside,<sup>44</sup> exit the vehicle<sup>45</sup> or, if the occupant had already exited, to get back inside.<sup>46</sup>

**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.<sup>47</sup>

**Lie on the ground:** See Officer-safety precautions (Lie on the ground), above.

**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.<sup>48</sup>

**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.<sup>49</sup>

**Identifying the detainee:** Officers may take steps to obtain “satisfactory” identification from the detainee, and to confirm his identity.<sup>50</sup>

**What is “satisfactory” ID?**

**Driver’s license:** A current driver’s license is presumptively satisfactory ID.<sup>51</sup>

**Exception:** This presumption does not apply if there was reason to believe the license was forged or altered.<sup>52</sup>

**Functional equivalent of a driver’s license:** A document will be considered satisfactory ID 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.<sup>53</sup>

**Other documents:** Other documents are not presumptively satisfactory ID, which means that officers may exercise discretion in making the determination.<sup>54</sup>

**Verbal identification:** A suspect does not satisfactorily identify himself by giving a name.<sup>55</sup> But officers may exercise discretion in determining whether verbal identification is sufficient.<sup>56</sup>

**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,<sup>57</sup> or (2) search it themselves.<sup>58</sup>

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

**No pat search:** Officers may not pat down a detainee to determine if he has a wallet or ID.<sup>59</sup>

**Question companions:** Officers may question the detainee’s companions to confirm his identity.<sup>60</sup>

**Refusal to ID:** If the detainee refuses to identify himself, officers may expand the scope of the detention to ascertain and confirm his identity.<sup>61</sup> This may include the following:

**Arrest for Pen. 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 Pen. Code § 148 because he is intentionally delaying the officers in the performance of their duties.<sup>62</sup>

**False name:** A violation of Pen. Code § 148(a)(1) and Pen. Code § 148.9(a) results if the detainee gave a false name.<sup>63</sup>

**False DOB:** A violation of Pen. Code § 148.9 results if the detainee lied about his DOB, even if he gave his true name.<sup>64</sup>

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

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

**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 passengers in vehicle:** It is arguable that officers have a right to identify all of the occupants of a vehicle that has been stopped, even though they do not have independent

grounds to detain them all. This is because all passengers in a lawfully stopped vehicle are lawfully detained, even if officers only have grounds to detain the driver.<sup>65</sup>

## Conducting the investigation

### Fundamentals

**Focused investigation:** The scope of the detention must be “carefully tailored” or “focused,”<sup>66</sup> meaning that officers may ordinarily do only those things that are reasonably necessary to protect themselves and complete their investigation.<sup>67</sup>

**Utilize reasonable means:** Even if the officers’ investigation was properly focused, a detention may be invalidated if they did not pursue their objectives in a reasonable manner.<sup>68</sup>

**Diligence:** There is no time limit.<sup>69</sup> Instead, officers must carry out their duties diligently.<sup>70</sup>

**Diligence does not mean speedy:** To say that officers must be diligent, does not mean they must “move at top speed.”<sup>71</sup>

**Delay attributable to detainee, other circumstances:** Delays resulting from the actions of the detainee, or from developments or other circumstances over which the officers had no control, will not result in a de facto arrest if the officers were diligent in responding to the changed circumstances.<sup>72</sup>

❖ **Examples:** See this endnote for examples.<sup>73</sup>

**When the clock stops:** The clock stops running when officers develop probable cause to arrest the detainee,<sup>74</sup> 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.<sup>75</sup>

**Miranda:** Although detainees are not free to leave, ordinary detentions are not “custodial” for *Miranda* purposes because the circumstances do not generate the degree of compulsion to speak that the *Miranda* procedure was designed to alleviate. See Chapter 42 MIRANDA: WHEN COMPLIANCE IS REQUIRED (Detained suspects).

**Not required to answer:** Detainees are not required to answer investigative questions.<sup>76</sup>

**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.

**Weapons? Parole?** Officers may ask the detainee if he possesses any weapons, or if he is on probation or parole.<sup>77</sup>

**Drugs?** Asking the detainee if he possesses drugs would seem to be relevant to officer safety because of the close connection between drugs and weapons, and because drug users tend to be unpredictable.<sup>78</sup>

**Off-topic questioning: The “measurably extend” test:** Questioning about matters that do not pertain directly to officer safety or the crime under investigation will not invalidate a detention so long as the questioning did not “measurably extend” the detention.<sup>79</sup>

**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.<sup>80</sup>

**Delays:** Although a detention may be invalidated if there was an unreasonable delay in obtaining warrant information, a more lengthy delay is permitted if officers had obtained preliminary information that a warrant was outstanding.<sup>81</sup>

**K9 sniffing:** Officers may walk a K9 around the detainee, his vehicle, or containers in his possession if it does not unreasonably extend the duration of the stop.<sup>82</sup>

**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.<sup>83</sup>

**Dog touches vehicle:** A vehicle “search” does not result merely because the dog put his paws on the vehicle.<sup>84</sup>

**Dog sticks nose in vehicle:** The Tenth Circuit ruled that the instinctive action of a dog jumping into an open part of a car it is sniffing does not violate the Fourth Amendment.<sup>85</sup>

**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 (Searches conducted by K9s).

**K9 alert establishes probable cause:** An alert by a K9 constitutes probable cause to search the location to which he alerted. See Chapter 32 PROBABLE CAUSE TO SEARCH.

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

**Transporting the detainee:** A detention ordinarily becomes a de facto arrest if the detainee was transported from the scene of the detention; e.g., to the crime scene, the police station.<sup>86</sup> 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:

**Consent:** A detainee may consent to be driven somewhere.<sup>87</sup> The requirements are essentially the same as those for consent searches. See Chapter 9 CONSENT SEARCHES.

**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 at the crime scene.<sup>88</sup>

**Short trip:** There is authority for transporting a detainee a short distance if it would help resolve the investigation.<sup>89</sup>

**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.<sup>90</sup>

**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.<sup>91</sup>

**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.<sup>92</sup>

**Photographing the detainee**

**Consensual:** The detainee may be photographed if he consented.<sup>93</sup>

**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, (1) the officers reasonably believed that the photo would confirm or dispel their suspicion, and (2) the procedure did not unduly prolong the detention.<sup>94</sup>

**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.<sup>95</sup>

**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.<sup>96</sup>

**Terminating the detention:** Officers must 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.<sup>97</sup>

**Converting Detentions Into Contacts:** Officers may be able to eliminate the time and scope limitations on detentions by converting them into contacts.<sup>98</sup> 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.<sup>99</sup>

**“Free to go”:** Although not technically a requirement,<sup>100</sup> officers should tell the suspect that he may leave.<sup>101</sup>

**Conflicting circumstances:** 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.<sup>102</sup>

**Officers' candor:** The courts sometimes note whether the officers explained to the suspect why they wanted 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 (Key Indicators, Officer's attitude, Candor).