

<b>Policy Name:</b>	<b>STREET CHECKS – BIAS-FREE POLICING</b>		
<b>Policy #:</b>	OP 4.45	<b>Last Updated:</b>	2021-10-21
<b>Issued By:</b>	COMMUNITY SERVICES BUREAU	<b>Approved By:</b>	SURREY POLICE BOARD
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## RELATED POLICIES

OP 3.1 Arrest and Detention

### 1. PURPOSE

- 1.1. To articulate the lawful authority of Surrey Police Service (SPS) Members to protect life and property, prevent crime, and investigate offences, while protecting the rights of all people as guaranteed under the *Canadian Charter of Rights and Freedoms*, and the provincial *Human Rights Code*.
- 1.2. To ensure a bias-free policing model that is absent of any practice, or the perception of a practice, of bias involving interactions with persons in the community.

### 2. SCOPE

- 2.1. This policy applies to all SPS Members.

### 3. POLICY

- 3.1. The SPS Street Check – Bias-free Policing policy ensures that interactions between SPS Members and the public are consistent with the *Canadian Charter of Rights and Freedoms*, federal and provincial human rights laws, and the British Columbia *Provincial Policing Standards*.
- 3.2. Members' interactions with persons in the community are critical to fulfilling policing duties and are encouraged to reduce crime, increase public safety and foster strong police-community relationships. This policy does not limit investigative police actions or positive contact and casual conversations with the public.

3.3. Members' interactions with persons in the community must be consistent with the *Canadian Charter of Rights and Freedoms* and the values it reflects, including the right to:

- i. be free from arbitrary arrest and detention;
- ii. freedom of expression, freedom of peaceful assembly, freedom of association, and freedom of mobility, subject only to reasonable restrictions imposed by law; and
- iii. equal protection and benefit of the law, without discrimination as defined in the *Human Rights Code*.

3.4. Members' decisions to conduct a Street Check or Police Stop (see Appendix A: Definitions) of a person must not be based on:

- i. Identity Factors, including but not limited to: economic or social status, race, colour, ancestry, place of origin, religion, marital status, family status, physical or mental disability, sex, sexual orientation, gender identity or expression, or age; or
- ii. solely on that person sharing an identity factor, such as race, with a person being sought by police;
- iii. however, Identity Factors may be considered in the totality of the circumstances leading to a decision to conduct a Street Check or Police Stop.

3.5. Members must consider the overrepresentation of Indigenous persons in the criminal justice system, and consider whether bias, racism or systemic discrimination is a factor giving rise to a potential interaction with an Indigenous person and, as a result, whether contact with the person is, in fact, necessary.

3.6. Members shall not randomly or arbitrarily conduct a Street Check or Police Stop of a person, which may or may not include a request for or the collection or recording of a person's identifying information, unless authorized by law.

3.7. Members shall not request, demand, collect or record a person's identifying information without a justifiable reason consistent with existing legal authorities and related limitations granted to a Member, such as:

- i. where permitted or required by provincial or federal laws;
- ii. a traffic stop, consistent with statutory and common law;
- iii. an arrest;
- iv. an attempt to execute a warrant against the person; or
- v. an investigation of an offence, or Reasonable Grounds to believe that an offence has occurred or is about to occur, or an imminent public safety threat.

3.8. Members may, while interacting with a person, request the person to voluntarily provide identifying information, and may record that information, provided that:

- i. the Member reasonably believes the interaction, and any information requested, serves a specific public safety purpose, including, but not limited to:
    - a. assisting in locating a missing person,
    - b. an objectively reasonable concern for a person's immediate safety,
    - c. assisting a person in distress to refer them to health, substance use, mental health or other supports or services, or
    - d. as part of the response to a call for service;
  - ii. the Member informs the person of the reason or purpose of the interaction or the request; and
  - iii. the Member takes steps to ensure the information is provided voluntarily, including, but not limited to advising the person that they are not required to answer any questions or provide any identifying information.
- 3.9. The Chief Constable or delegate will ensure that an audit is conducted, at least annually, on voluntary requests for identifying information as outlined in this policy. Audits will be conducted consistent with *BC Provincial Policing Standards* (BCPPS) Article 6.2 and any additional requirements of the Ministry of Public Safety and Solicitor General.

#### **4. PROCEDURE**

- 4.1. If an Investigative Detention, arrest, or application of a Statutory Authority is appropriate, this is not a Street Check or Police Stop and must not be recorded as one in PRIME.
- 4.2. The scope of lawful authorities for police to detain a person, which fall outside of a Street Check or Police Stop, and which may justify a request or demand for identifying information from a person include:
  - i. Investigative Detention: A brief Detention that is based on the Member's Reasonable Suspicion or Articulable Cause but falls short of Reasonable Grounds to believe;
  - ii. Reasonable Grounds to Arrest: Grounds that would lead an ordinary, prudent and cautious person to have a strong and honest belief about the situation at issue.
  - iii. Statutory Authority: Federal statutes (e.g., *Criminal Code*, *Controlled Drugs and Substances Act*), provincial statutes (e.g., *Motor Vehicle Act*, *Liquor Control and Licencing Act*), and municipal bylaws that provide police the authority to compel identification from a person pursuant to the applicable statute or when the person is or has committed an offence in relation to the statute or bylaw.
- 4.3. When Members are conducting a Street Check or Police Stop, they should consider the possibility that the person may feel psychologically detained due to factors such as:
  - i. the circumstances that gave rise to the interaction;
  - ii. the nature of the Member's conduct; and
  - iii. the particular characteristics of the person, including but not limited to:

- a. Indigenous;
- b. homelessness;
- c. racialized;
- d. age;
- e. physical stature;
- f. minority status; and
- g. level of sophistication in the context of the person's ability to understand their rights.

4.4. Where a Member concludes that a person is psychologically detained, the Member should conclude the Street Check or Police Stop and immediately allow the person to proceed.

4.5. Where a Member asks a person for identifying information, the Member shall inform the person of the public safety purpose or objective for the Street Check or Police Stop.

4.6. Where there is no lawful authority to detain or arrest a person, the person's interactions with a Member are voluntary, and the person is free to proceed. Their refusal to stay or answer questions does not justify further law enforcement action or Detention.

#### **Documentation of Street Check**

4.7. A Member who self-initiates a Street Check or Police Stop (i.e., is not responding to a call for service) and requests that the person voluntarily identify themselves (e.g., name, address and date of birth) or provide ID, must create a General Occurrence (GO) report in PRIME that includes, at a minimum, a "Street Check Event" template. This requirement applies whether or not the person voluntarily provided identification.

4.8. When Members have lawfully arrested or detained a person, they may take a digital photograph of the detainees / arrested person to supplement their notes. However, if a person either voluntarily interacts with Members (i.e., Street Check or Police Stop) or chooses not to, Members shall not photograph the person, but may create a written record of the person's physical descriptors in their notebook or as a PRIME entry.

4.9. If a Member has authority and Reasonable Grounds to photograph a person, and does so, the photograph(s) must be retained in PRIME as an attachment to the General Occurrence (GO) report documenting the interaction.

4.10. Members may interact with a child (person under 12 years old) or youth (person 12 to 18 years old) to conduct a well-being check, or to confirm the identity of a missing or runaway child, or other victims of crime, or in a situation of urgency. A record will be made in PRIME of those types of interactions in accordance with their legal authority (e.g., British Columbia *Child, Family and Community Service Act*).

4.11. Where it appears that the person stopped may be a youth or child, the Member will ask the person their age before being asked to provide other voluntary identifying information. The youth or child

will also be advised of their right to contact a parent or guardian, and to have such a person present when being asked to consent to providing identifying information.

4.12. Once a Street Check or Police Stop has concluded, Members must record the “Street Check” event template on PRIME, according to the relevant scoring code or rules, and in sufficient detail to articulate and justify the reason for the interaction.

4.13. When completing a “Street Check” event, the Member shall:

- i. leave the incident number to its default setting, as PRIME will auto-generate the Street Check event number;
- ii. index as entities all persons, vehicles and locations involved and complete all entity information;
- iii. code all entities with a primary role code of (10) “Street Check”, and use secondary codes as appropriate (e.g., “Registered Owner”, “Driver”, “Passenger”, etc.); and
- iv. complete the Synopsis page (within the Street Check event) outlining the reason for initiating the contact that led to the stop, and all relevant and factual information and observations from the interaction.

4.14. If a Street Check is submitted and it is subsequently determined that it is related to a GO, the two must be linked through “Related Events” by the Reader or Supervisor.

#### **Monitoring and Audit**

4.15. Supervisors shall monitor the conducting of Street Checks or Police Stops by their Members to help ensure compliance with this policy and to flag concerns. Where a concern exists, the Supervisor may consider coaching Members on conducting of a Street Check and the policy provisions and standards.

4.16. Supervisors will consult with the PRIME Coordinator when it is considered appropriate to remove identifying information from the Street Check entry on PRIME.

4.17. Supervisors will be informed of their Members’ Street Check entries through an automatic direct notification in PRIME.

4.18. The Inspector i/c Information Management Section will ensure that PRIME audits are conducted, at a minimum of annually, on Street Checks, consistent with requirements of the BCPPS and any related guidelines from the Ministry of Public Safety and Solicitor General.

4.19. Street Check audits will be of a representative sample of Street Checks by Members and must include consideration of:

- i. whether the scoring is appropriate to the circumstances of the interaction;

- ii. whether the reasons for the interaction and the request for identifying information have been articulated sufficiently;
  - iii. whether the inclusion of identifying information in the record is justifiable;
  - iv. providing direction to the officer, if the interaction is not consistent with this policy chapter and the associated BCPPS (any direction to be through the Member's Supervisor); and
  - v. ensuring that any identifying information is removed, if either the initial collection or ongoing retention of the record is not justifiable.
- 4.20. Audit results and any recommendations will be submitted to the Chief Constable via the chain of command.
- 4.21. The Information Management Section will maintain aggregate data about the number and type of interactions that resulted in a request for identifying information in Street Checks.
- 4.22. Aggregate data will be provided to the Surrey Police Board and the public through periodic reports.

### **Training**

- 4.23. The SPS will provide standardized training to all Members on conducting Street Checks or Police Stops, including but not limited to: Legal framework for Investigative Detention and Police Stops; rights of a person under the *Canadian Charter of Rights and Freedoms* and the *BC Human Rights Code*; Psychological Detention; bias awareness; legal articulation; parameters for conducting of Street Checks or Police Stops; and provisions of this policy and BCPPS Article 6.2.

### **Records Management**

- 4.24. Street Check information will be retained in PRIME for the period specified by BCPPS, or in absence of a specified period, the retention schedule used by PRIME. The exception is when a Street Check is linked to a secondary operational file, in which case the Street Check record must be retained in support of the secondary operational file.
- 4.25. The Inspector i/c Information Management Section will implement a protocol to purge Street Check records consistent with the retention schedule determined by BCPPS or as otherwise required by the law.
- 4.26. The SPS will comply with statutory requirements under the *BC Freedom of Information and Protection of Privacy Act* (FOIPPA) and will not release identifying information from Street Checks except in exigent circumstances where public safety is at risk. This, however, does not restrict the rights of a person to request Street Check Records under the FOIPPA. Any requests for disclosure of Street Check records will be referred to the Manager, Information and Privacy.

## **APPENDIX A: DEFINITIONS**

“Articulable Cause” means a cause that can be justified in a stated explanation. Articulable Cause has been defined as objectively discernible facts which give the detaining officer reasonable cause to suspect that the detainee is implicated in the activity under investigation.

“Detention” refers to a suspension of an individual’s liberty interest by virtue of a significant physical or psychological restraint by the state. Therefore, when police conduct general enquiries with a person, they have the ability to do so, without the interaction becoming a “Detention”, as long as that restraint is not significant. The point at which the restraint becomes significant is the point at which the interaction turns into a legal Detention, and the person’s *Charter* rights and freedoms become engaged.

“GO” means a General Occurrence Report submitted in the PRIME records management system.

“Identity Factors” means any information which, alone or in combination with other information, can be used to identify a person. Identity Factors include but are not limited to: economic or social status, race, colour, ancestry, place of origin, religion, marital status, family status, physical or mental disability, sex, sexual orientation, gender identity or expression, or age.

“Investigative Detention” means the temporary Detention of a person for the furtherance of an investigation related to the commission or continuing commission of a criminal offence proximate in time and location to the person to be detained. The Member must have Reasonable Suspicion, in all the circumstances, that a person is connected to a recent and particular offence for which the Detention is necessary.

“Member” means a sworn Police Officer appointed by the Surrey Police Board.

“NCO” means non-commissioned officer and includes the rank of Sergeant and Staff Sergeant or a Member acting in that role.

“PRIME” means the Police Records Information Management Environment, the provincial police records management system, which is shared by 14 municipal police agencies and 135 RCMP detachments across BC.

“Psychological Detention” means a situation where, in the absence of a direction or demand from a police officer, a person reasonably believes that they are not free to leave.

“Reasonable Suspicion” means an expectation that an individual is possibly engaged in some criminal activity. It must be based on something more than a hunch or mere suspicion and is something less than on Reasonable Grounds to believe. “Like Reasonable Grounds to believe, Reasonable Suspicion is an objective standard that requires “objectively discernible facts, which can be subject to independent judicial scrutiny”. However, Reasonable Suspicion is a lower standard than Reasonable Grounds to believe, looking at reasonable possibility, rather than reasonable probability.

“Reasonable Grounds” means grounds that would lead an ordinary, prudent and cautious person to have a strong and honest belief about the situation at issue. For example, when a police officer has Reasonable

Grounds to believe that a person has committed, is committing, or is about to commit an indictable offence, then s. 495 of the *Criminal Code* provides authority for an arrest.

“Statutory Authority” means federal statutes, provincial legislation, and municipal bylaws, that provide police the authority to compel identification from a person pursuant to the applicable statute or bylaw when the person is or has committed an offence in relation to the statute or bylaw.

“Street Check” or “Police Stop” means a voluntary and non-random interaction between an SPS Member and the public that occurs subsequent to the Member viewing or receiving information of suspicious or criminal activity in relation to the person(s) in that specific geographical area. A Street Check also includes instances where Members respond to a request or proactively check on the well-being of a person. A Street Check is not an arrest or investigative Detention, where there is established lawful authority to detain an individual and gather personal information. A Street Check also does not include vehicle stops where an offence has occurred, or there is a common law authority to check the sobriety of the driver, status of driver’s licence and insurance, or the mechanical fitness of the vehicle.

“Supervisor” means a Team Leader, Manager, Sergeant, Staff Sergeant, Inspector, Superintendent, Deputy Chief Constable, Chief Constable, and any other person acting in a Supervisory capacity who is accountable for a particular area or shift on behalf of the SPS.

## **APPENDIX B: REFERENCES**

British Columbia *Provincial Policing Standard* s.6.2.1 – Police Stops

*Canadian Charter of Rights and Freedoms*, Part 1 of the *Constitution Act*, 1982

*Criminal Code*, R.S.C. 1985, c. C-46

*Human Rights Code*, R.S.B.C. 1996, c. 210

*Police Act*, R.S.B.C. 1996, c. 367

Tulloch, Hon. Michael (2018) “Report on the Independent Police Stops Review”

Vancouver Police Department (2018) “Understanding Police Stops: An examination of a Proactive Policing Strategy”