Charleston County Sheriff's Office
Policy and Procedures Manual

Sheriff Carl Ritchie

2-07
Authority and Use of Discretion

☐ New
☐ Revised
☒ Reviewed

ACA Standards Reference:
CALEA Standards Reference: 1.1.3, 1.1.4, 1.2.1, 1.2.3, 1.2.4, 1.2.5, 1.2.6, 1.2.7, 1.2.8, 1.2.9, 61.1.6
NCCHC Standards Reference:
SCLEA Standards Reference:
SC Minimum Standards:

This policy dated 1/28/2025 replaces prior policies cited above and supersedes all previously issued directives.

I. Purpose:

To define the basis and limits of authority for sworn personnel of the Charleston County Sheriff's Office.

II. Policy:

It is the policy of the Charleston County Sheriff's Office to adhere to all applicable constitutional requirements as they pertain to the scope and limits of law enforcement authority. (Ref: CALEA 1.2.1)

III. Definitions:

A. For purposes of this procedure, the word "deputy" applies to all agency employees with a certification classification of Class I, Class II, Class III, or Reserve Deputy, as defined by the South Carolina Criminal Justice Academy.

The following terms are used interchangeably; however, they carry guidance to specific employees based on usage of the term:

1. Deputy, deputies, deputy sheriff, detention deputy, sworn employee, uniformed sworn employee, sworn administrative employee, and

2. civilian, non-sworn employee.

B. *Employee:* When used without further clarification, the term employee is inclusive of all agency members (sworn and non-sworn).

IV. Procedure:

A. Office of the Sheriff:

1. Article V, § 24 of the State [of South Carolina] Constitution provides for the election of a sheriff in each county. The Code of Laws of South Carolina, 1976, as amended (hereafter the S.C. Code), provides for duties and qualifications of the Sheriff (e.g., § 23-11-110, *Qualifications of Sheriffs*; § 23-11-20, *Oath of Sheriff*).

2. § 23-13-10 of the S.C. Code authorizes sheriffs to appoint, with the approval of a circuit court judge, deputy sheriffs. The authority and

duties of deputy sheriffs are clearly described in § 23-6-400 and § 23-13-50 through § 23-13-70 of the S.C. Code. (Ref: CALEA 1.2.1)

B. General Qualifications of Deputy Sheriffs:

1. To be employed as a deputy sheriff with the Charleston County Sheriff's Office, an individual must meet the following minimum qualifications:

   a. be at least 21 years of age,

   b. be a citizen of the United States,

   c. have, or be able to obtain, a valid South Carolina driver's license, and

   d. have a high school diploma or its equivalent.

2. § 23-6-430 of the S.C. Code requires certification by the South Carolina Criminal Justice Academy prior to enforcing the laws of the State of South Carolina or any political subdivision thereof.

C. Powers of Arrest:

1. § 23-13-60 of the S.C. Code states that "deputy sheriffs may for any suspected freshly committed crime, whether upon view or upon prompt information of complaint, arrest without warrant and, in pursuit of the criminal or suspected criminal, enter houses or break and enter them, whether in their own county or in an adjoining county."

2. Arrest: To deprive a person of his liberty, by legal authority, for the purpose of holding or detaining him to answer a criminal charge.

3. Standards for Arrests:

   The United States Supreme Court has held on numerous occasions that the Fourth Amendment to the United States Constitution applies to all seizures of persons. The language of the South Carolina

Constitution (i.e., Art. I, § 10) is almost identical to that of the Fourth Amendment. Statutory provisions concerning arrests are contained in Title 17 of the S.C. Code, Chapter 13. (Ref: CALEA 1.2.1)

4. Elements of Arrest:

   Probable cause is the Fourth Amendment standard by which all arrests and most searches are judged. Briefly stated, probable cause is a reasonable belief grounded on facts.

   a. Probable cause exists where the facts and circumstances within the arresting deputy sheriff's knowledge are sufficient to warrant a reasonable law enforcement officer in believing that the suspect had committed or was committing a crime.

   b. Probable cause must exist at the time the deputy sheriff makes the arrest.

   c. An alibi that can be easily checked out or other evidence favorable to the accused must be considered. If the inclusion of this additional evidence removes the level below probable cause, no arrest should be made.

5. Arrests with a Warrant:

   a. Felony:

      The preferred way to make any arrest is with a warrant. Absent exigent circumstances, a warrant is required for a non-consensual entry at a suspect's residence to make a routine felony arrest.

   b. Misdemeanor:

      A warrant is required to make an arrest in all misdemeanor cases except where the crime was committed in the deputy sheriff's view or presence (see § 17-13-30 of the S.C. Code).

6. Arrests without a Warrant:

   a. Felony:

A warrantless arrest may be made in a public place even though there was sufficient time to obtain a warrant after probable cause was developed (*U.S. v. Watson, 423 U.S. 411 (1976)*).

b. Misdemeanor:

The general rule in South Carolina is that law enforcement officers may not arrest without a warrant a person who commits a misdemeanor outside their view. However, where the officer arrives shortly after the commission of the crime, and easily observable evidence strongly indicates the crime was freshly committed, the officer may arrest without a warrant (*State v. Martin, 275 SC 141, (1980)*).

c. Other exceptions to the warrant requirement include hot pursuit and exigent circumstances. These factors are, however, limited to serious crimes and a warrantless entry to arrest in minor offenses is not permitted (*Welsh v. Wisconsin, 466 U.S.740 (1984)*). (Ref: CALEA 1.2.5)

7. Use of Force:

Deputy sheriffs are permitted to use the amount of force reasonable and necessary to impose custody and overcome all resistance in order to ensure the safety of the arresting deputy sheriff and others in the vicinity of the arrest. This includes forcible entry of a residence or elsewhere.

D. Consular Notification – Vienna Convention on Consular Relations (VCCR) and other bilateral consular agreements:

1. Deputy sheriff's will advise foreign national suspects of their right to communicate with their consular officers when arrested or detained. The Department of State does not consider it necessary to follow consular notification procedures when an alien is detained only momentarily (e.g., during a traffic stop).

2. Requiring a foreign national to accompany a deputy sheriff, either voluntarily or in a custodial situation, to a place of detention may trigger the consular notification requirements, particularly if the detention lasts for a number of hours or overnight. The longer a

detention continues, the more likely it is that a reasonable person would conclude that the Article 36 obligation is triggered.

3. Determine the foreign national's country. In the absence of other information, assume this is the country on their passport or other travel documents.

4. If the foreign national's country is not on the mandatory notification list:

   a. Offer, without delay, to notify the foreign national's consular officials of the arrest/detention.

   b. If the foreign national asks that consular notification be given, notify the nearest consular officials of the foreign national's country without delay.

5. If the foreign national's country is on the list of mandatory notification countries:

   a. Notify that country's nearest consular officials, without delay, of the arrest/detention.

   b. Inform the foreign national that you are making this notification.

   c. Notification and actions taken must be documented on agency incident reports and *Consular Notification Form (CCSO form-172)*. (Ref: CALEA 1.1.4)

6. Consular Access to Detained Foreign Nationals:

   a. Detained foreign nationals are entitled to communicate with their consular officers.

   b. Any communication by a foreign national to their consular representative must be forwarded by the appropriate local officials to the consular officer without delay.

c. Foreign consular officers shall be given access to their nationals and permitted to communicate with them.

(Ref: CALEA 1.1.4)

7. Death of Foreign Nationals:

When a member of this agency becomes aware of the death of a foreign national in Charleston County, the deputy sheriff must ensure the nearest consulate of the national's country is notified of the death. This should be accomplished by the Coroner with assistance from the Sheriff's Office. (Ref: CALEA 1.1.4)

E. Investigative Detention:

1. Investigative detention is the temporary restraint of a person's freedom to walk away when such person is suspected of being involved in criminal activity. The stop is a permissible Fourth Amendment seizure.

2. Investigative detentions (stops) and protective searches (frisks) represent two separate and distinct procedures available to officers when investigating suspicious circumstances or detaining for identification purposes. Each procedure must have its own independent justification based upon facts known to officers. The investigative detention is a seizure, and the protective frisk is a search. Each must meet the constitutional standard of reasonableness, as contained in the Fourth Amendment (Terry *v. Ohio, 392 U.S. 1 (1968))*.

3. Most investigative detentions involve persons suspected of committing crimes. The use of this procedure, however, has also been expanded to include detention of objects where the facts known to the officer are insufficient to justify probable cause for a search warrant, yet support a reasonable suspicion that the object contains contraband or other evidence of criminal activity. In such a case, the officer may detain a package, box, truck, or suitcase temporarily while attempting to secure additional facts justifying a search warrant. The privacy of the package and its contents must not be disturbed (*US v. Place, 462 U.S. 696, (1983))*.

4. Moving a Detained Person:

Most detentions occur on the street and involve the stopping of a pedestrian or motorist. Problems arise when the initial detention site is changed without justification. It should be remembered that any exercise of detention authority should be accomplished with a minimum of intrusion. Moving a detained person should be avoided unless there is a valid reason to do so (*Florida v. Royer, 460 U.S. 491, (1983))*. Moving a detained person a short distance is permitted:

a. to afford better lighting;

b. to permit the officer to use the car radio;

c. to prevent a traffic hazard;

d. to avoid a hostile crowd; and/or

e. order suspect out of vehicle (*Pennsylvania v. Mimms, 434 U.S. 106 (1977)*).

5. Transporting a suspect to the Sheriff's Office is a more serious intrusion and will probably turn the stop into a full custody arrest unless a proper advisement is given to the person that he or she is not under arrest and is free to leave (*Dunaway v. New York, 442 U.S. 200 (1979).*

6. Duration of Detention:

An officer may detain a suspect for a reasonable time. Up to thirty minutes can be considered reasonable under most circumstances. However, this is a flexible standard and can be extended if the initial stop was justified and the delay is reasonably related to an investigation that will confirm or dispel the suspicion (*US v. Sharp, 470 U.S. 675, (1985).* Also see *US v. Place, 462 U.S. 696, (1983)* where 90 minutes was held to be unreasonable).

7. Use of Force:

In order to affect a stop and enforce a period of brief detention, a deputy sheriff may employ that degree of force necessary under the circumstances, short of deadly force. The use of deadly force has no place in an investigative detention situation and will not be justified under any circumstances. This, however, does not preclude the deputy sheriff defending themself if assaulted while attempting to make a stop. (Ref CALEA 1.2.3 item *a*)

F. Authority to Frisk:

1. A protective pat down search is permitted for weapons only after a lawful stop and the deputy sheriff has a reasonable suspicion the suspect is armed and dangerous.

2. Intensity of Frisk:

The officer may pat down a suspect's outer clothing for weapons only. The protective pat down cannot be used as subterfuge for an evidence search. If an officer lawfully pats down and feels an object whose contour and mass makes it identity immediately apparent as contraband, the officer may seize the object and have it admitted into evidence. However, "plain touch" will support a warrantless seizure only when the frisk remains in the bounds of the weapons search permitted by (Terry *v. Ohio, 392 U.S. 1 (1968)) and* (*Minnesota v. Dickerson, 508 U.S. 366 (1993))*.

3. Area of Frisk:

If the facts justify it, the frisk could be extended to include unlocked and unsealed hand carried items where the size and design permits easy access to possible weapons, companions of the suspect, and vehicles (*Michigan v. Long 463 U.S. 1032, (1983))*.

G. Justification for a Stop:

1. Constitution Standard:

Where facts known to the officer do not constitute probable cause to arrest, they may satisfy the lesser standard (and less intrusion) of "*reasonable suspicion"* to stop (*Michigan v. Chesternut, 463 U.S. 1032, (1988*)) and (C*alifornia v. Hodari., 499 U.S. 621 (1991))*. The courts have generally adopted a simply worded standard: "whether the officer had specific and articulable facts giving rise to a *reasonable suspicion* of criminal activity" (*State v. Culbreath, 387, S.E.2d 255, (1990)* and *US v. Cortez, 449 U.S. 411, (1981))*. The process is a balancing of the suspect's right to be free from unreasonable seizure, against the duty of police to investigate suspicious activity. (Ref: CALEA 1.2.4)

2. Street Encounters Not Amounting to a Stop:

There is nothing to prevent an officer from approaching and talking to an individual on the street. The usual test separating a street encounter from a Terry stop is whether an individual is detained. Street encounters do not, however, obligate an individual to comply with the officer's request to remain stationary or provide information (*Kolender v. Lawson, 461 U.S. 352, (1983))*.

H. Vehicle Stop:

Any stop of a moving vehicle is a Fourth Amendment seizure and reasonable suspicion is required. However, a highway sobriety checkpoint which calls for stopping and briefly detaining all motorists passing through such checkpoints is reasonable and need not be supported by individualized suspicion (*Michigan v. Sitz, 496 U.S. 444, (1990))*. (Ref: CALEA 61.1.6)

I. Searches:

1. Search:

Any governments conduct which intrudes upon a person's reasonable expectation of privacy (*Katz v. U.S.* 38 U.S. 347 (1967)) and Fourth Amendment of the United States Constitution.

2. The Fourth Amendment protects all persons located within the United States. This includes U.S. citizens, legal aliens and illegal aliens. United States citizens living abroad are also protected.

3. Under a search warrant, or in the course of a valid warrantless search, virtually any tangible article or intangible article may be seized where the State can show a connection with criminal activity.

4. The S.C. Code (17-13-140) identifies five categories of seizable property:

a. stolen or embezzled property;

b. possession of unlawful property (contraband);

c. property which is being used or has been used in the commission of a criminal offense (instrumentalities);

d. property constituting evidence of a crime (mere evidence); and

e. any narcotic drug (controlled substances).

5. There is no requirement that the things to be seized are in the possession of one suspected of criminal activity. A search warrant may be directed against a criminal or non-criminal target such as a newspaper (*Zurcher v. Stanford Daily, 436 U.S. 547, (1978))*.

J. Warrant Requirements:

1. The first and foremost principle affecting the development and interpretation of Fourth Amendment law is the warrant requirement. Searches conducted outside the judicial process, without prior approval by judge or magistrate are per se unreasonable under the Fourth Amendment subject to only a few specifically established and well-defined exceptions (*Katz v. U.S.* 38 U.S. 347, (1967)).

2. The authority of a warrant is the best assurance that a search will be deemed reasonable by the courts and it is generally accepted that, absent special circumstances, search warrants are required for all searches in the criminal investigation area (*U.S. v. Leon 468 U.S. 897 (1984))*.

3. In South Carolina, an affidavit must be sworn before a magistrate establishing the grounds for the warrant (*State v. McKnight, 291 S.C. 110, (1987))*.

K. Exceptions to the Warrant Requirements:

Generally, there are four narrowly-drawn exceptions to the warrant requirement: consent searches, searches incident to arrest, certain vehicle searches, and emergency searches.

1. Consent Searches:

While not preferred, a search made with the voluntary consent of one authorized to give it is lawful. A consent is a relinquishment of Fourth Amendment rights by the consenting party, and thus reasonable even in the absence of probable cause and where searching officers cannot particularly describe the materials being sought (*Schneckloth v. Bustamonte, 412 U.S. 218, (1973))*. The critical issue in any consent search is whether the consent is voluntary; that is, the result of a free and unconstrained choice. It is the government's burden to prove the consent was not coerced. (Ref: CALEA 1.2.4)

2. Search Incident to Arrest:

The authority to search following a full custody arrest allows a full and complete search for weapons, implements of escape and for evidence connected with the crime for which the person is being arrested. The purpose of the search is to protect the arresting officer, prevent escape and preserve any evidence in the possession of the arrestee. Following a full custody arrest, an officer is entitled in all cases to search the person of the arrestee and the area within the immediate control of the arrestee at the time of his arrest (*Chimel v. California, 395 U.S. 752, (1959)*). The area of immediate control is any place from which the person arrested may seize a weapon or destructible evidence and can be viewed generally as the space within arm's reach and slightly beyond. Items of personal property which fall within this area and are accessible to the arrestee, such as an open desk drawer or unlocked suitcase, may be searched. However, absent emergency circumstances, non-portable items of personal property such as a double-locked footlocker, or sealed carton or crate, may not be searched. If there are reasonable grounds to believe they contain evidence, they may be seized, and a search warrant should thereafter be obtained prior to opening.

a. A search incident to arrest may be as thorough as necessary to protect the arresting deputy sheriffs and the arrestee, preserve evidence and prevent escape. However, strip searches and body cavity searches are justified only under extraordinary circumstances. As a general rule, a court order should be obtained before a body cavity search.

(Ref: CALEA 1.2.4 and 1.2.8 item *a*)

b. Protective Sweeps:

Following a lawful arrest made within premises, deputy sheriffs may properly conduct a search of the premises if they have a reasonable suspicion that confederates, accomplices, or others are present and may jeopardize the safety of the arresting deputy sheriffs or the arrestee.

c. Reasonable suspicion must be based upon facts known to the officers, such as noises in the attic or the at-large status of confederates. The search is not solely justified by the arrest. Rather, it is an independent search authority aimed at the protection of the arresting officers (*Maryland v. Buie, 494 U.S. 325, (1990)*). (Ref: CALEA 1.2.4)

d. Inventory of Personal Property:

Items of personal property removed from a person who has been arrested and is to be incarcerated should be carefully inventoried by officers prior to being stored for safekeeping. A receipt for the property should be prepared and given to the arrestee. This inventory should include the content of containers such as purses, shoulder bags, suitcases, etc., whether or not these containers are locked and sealed. In the event of locked containers, great care must be taken to minimize damage to the container or its contents while gaining access. This caretaking function must not be construed as an alternative to a search warrant. Whenever there is probable cause to believe that evidence is in the container, the container should be secured until a search warrant can be obtained (*Illinois v. Lafayette, 462 U.S. 640, (1983))*.

3. Vehicle Searches:

The same authority that allows searches of persons and premises applies to motor vehicles. Thus, an automobile may be searched under a search warrant, if it is located in the jurisdiction where the warrant is outstanding. It may also be searched by consent of a party having lawful possession of the vehicle, and it may be searched pursuant to the arrest of the driver or an occupant, as long as the arrest occurs within or in proximity to the vehicle.

a. A warrantless search of an automobile may be conducted on the basis of probable cause to believe the vehicle contains contraband (*Carrol v. U.S., 267 U.S. 132, (1925))*. Vehicles may be searched without a warrant primarily because of a reduced expectation of privacy. The mobility (exigency) factor is secondary. A search of a vehicle found on the open road or other public place may be made without a warrant, consent, or arrest where the officers have probable cause to believe the vehicle contains contraband or evidence of crime and it is impractical to obtain a search warrant (*U.S. v. Johns, 469 U.S. 478, (1985))*.

b. Scope of the Search:

i. The scope of the search is the same as with a search warrant and may therefore extend to any part of the vehicle wherein evidence sought could be reasonably located. Likewise, the search may extend into any container of whatever kind found within the vehicle as long as the evidence sought could be secreted therein. Just as with a warrant, the scope of the search is limited by the nature of the object sought rather than by the nature or condition of the container (*US v. Ross, 456 U.S. 798, (1982))*.

ii. Since the authority to search is directed against the vehicle, search of the driver and occupants for evidence is not permissible, although a self-protective frisk may be used upon a reasonable suspicion such persons are armed and are a threat. The authority to make this warrantless vehicle search extends to a vehicle that is also a dwelling (*California v. Carney, 471 U.S. 383, (1985*)). (Ref: CALEA 1.2.4)

iii. Search Incident to Arrest in a Vehicle:

The general rule is that the search incident to arrest may extend to those areas within the immediate control of the arrestee at the time of the arrest. It has been construed to mean the entire passenger compartment including any containers located therein such as closed or open glove boxes, consoles, luggage, boxes, bags, or clothing. If such containers are locked or sealed, they should not be searched without a warrant in the absence of some emergency or the voluntary consent of the party having possession. Furthermore, the search incident to arrest may not extend into the trunk of the vehicle (*New York v. Belton, 453 U.S. 950, (1981)*).

(Ref: CALEA 1.2.4)

iv. Frisk-type Search of a Vehicle:

Police officers may stop a vehicle for investigative purposes based upon specific, articulable facts which, taken together with rational inferences from those facts, reasonably warrant suspicion of criminal conduct on the part of the occupant of the vehicle (Terry *v. Ohio, 392 U.S. 1 (1968)*). During the course of the investigative stop of an automobile, a search of the passenger compartment, limited to those areas in which a weapon may be placed or hidden, is permissible if the police officer has a reasonable belief based on specific and articulable facts that the suspect is dangerous and may gain immediate control of a weapon (*Michigan v. Long, 463 U.S. 1032, (1982)*). (Ref: CALEA 1.2.4)

4. Inventory:

a. An inventory is different from the vehicle search. It does permit a deputy sheriff to make a warrantless seizure of contraband or other evidence from a vehicle and has been held reasonable by the courts because of its non-investigatory nature. The concept of inventory is based upon the idea that law enforcement frequently come into possession of property belonging to other people and is further based upon three primary interests:

i. protecting the car owner's property;

ii. protecting law enforcement against claims of theft and damage; and

iii. protecting law enforcement and the public against dangerous instrumentalities.

b. Threshold Requirements:

i. Vehicle must be taken into custody (*South Dakota v. Operman, 428 U.S. 364, (1976))*.

ii. The inventory must be done pursuant to written departmental policy guidelines (*Florida v. Wells, 495 U.S. 1 (1990)*).

c. Scope of the Search:

i. The scope of the inventory extends to the entire vehicle plus containers therein consistent with the caretaker purpose.

ii. Non-evidentiary items of significant value found in the vehicle should be removed for safekeeping and afforded adequate security. Contraband or evidence found in the vehicle should be immediately seized and preserved in accordance with existing procedures governing the seizure of physical evidence. A receipt should be given for all items removed from the vehicle. If the doors, the glove compartment, the trunk, or any other containers therein are locked or otherwise sealed, great care should be taken to minimize damage to property while gaining access to conduct the inventory (*Colorado v. Bertine, 479 U.S. 367, (1987)*. (Ref: CALEA 1.2.4)

5. Emergency Searches:

a. The law recognizes that under certain circumstances, the requirement of a search warrant is waived, and a deputy sheriff may properly make a warrantless entry and search a place protected by the Fourth Amendment. Immediate, warrantless entry is justified for the following:

i. to protect life and safety;

ii. to arrest a fugitive in hot pursuit; and/or

iii. to preserve evidence being destroyed or removed.

b. Such entries and searches can be made only under extraordinary circumstances. Deputy sheriffs should be prepared to justify their actions by supporting a reasonable belief that an emergency existed. (Ref: CALEA 1.2.4)

c. Crime Scene Searches:

Scenes may not present such exigent circumstances that will permit a warrantless search of the entire premises. Officers may respond to the emergency and seize evidence in plain sight, but any extended search of premises directed against the person possessing Fourth Amendment protection in that premises, must be done under a search warrant or with the consent of the person in lawful possession (*Mincey v. Arizona, 437 U.S. 375, (1978)* and *Thompson v. Louisiana, 469 U.S. 17, (1984)*). (Ref: CALEA 1.2.4)

6. Related Warrantless Search Situations:

a. Supervisory Searches:

The warrantless search of an employee's desk or file cabinet by a supervisor is reasonable if made for non-investigatory, work-related purposes, or to investigate work-related misconduct (*O'Connor v. Ortega, 480 U.S. 709, (1987)*).

b. School Searches:

The U.S. Supreme Court has approved a warrantless search of a public school student by school authorities, by balancing the school's need to maintain safety, order, and discipline against the student's right of privacy (*New Jersey v. T.L.O. 469 U.S. 325, (1985))*. (Ref: CALEA 1.2.4)

L. Confessions, Interrogation, and the Miranda Rule:

1. *The Miranda Rule:*

The *Miranda Rule* is the product of four separate Supreme Court decisions (including *Miranda v. Arizona 384 U.S. 436, 1966*). *Miranda* requires that once a suspect is taken into custody, police must warn the suspect of their rights prior to interrogation. The person must be advised:

a. that they have a right to remain silent;

b. that any statement they make may be used against them;

c. that they have a right to the presence of an attorney; and

d. that if they cannot afford an attorney, one will be appointed for them prior to any questioning if they so desire, at no cost to them.

2. Never assume that a suspect already knows their rights. Every suspect should be advised of their rights if there will be custodial interrogation (*Duckworth v. Eagan, 492 U.S. 195, (1989))*.

3. The suspect does not need to be advised of all the crimes about which they may be questioned (*Colorado v. Spring, 479 U.S. 564, (1987))*.

4. Refusal to Sign a Waiver Form:

When a suspect refuses to sign a waiver form, but agrees to talk with the police, their oral waiver may be deemed to cancel out their refusal to sign waiver documents (*North Carolina v. Butler, 441 U.S. 379, (1979))*. (Ref: CALEA 1.2.3 items *a* and *b*)

M. Custodial Interrogation:

1. The Meaning of Custody:

Arrest or the equivalent. Taken into custody (arrest) or otherwise deprived of their freedom of action in any significant way must first be advised of his *Miranda* warnings (*Miranda v. Arizona*). The test for custody is whether there was a formal arrest or restraint on freedom of movement of the degree associated with a formal arrest. The subjective views harbored by the interrogating officers or the subject being questioned are irrelevant (*Stansbury v. California, 511 U.S. 318 (1994)*).

2. Traffic Stops:

An ordinary traffic stop temporarily detains a person but is not "in custody" for the purpose of *Miranda*. Traffic stops, like *Terry* stops, constitute investigative rather than custodial detentions unless the conditions and duration become the equivalent to an arrest. After a formal arrest (even for a traffic offense), *Miranda* warning must be given and a waiver obtained prior to interrogation (*Berkemer v. McCarty, 468 U.S. 420, (1984)*; *Pennsylvania v. Bruder, 488 U.S. 9, (1988)*; and *State v. Peele, 378 S.E.2d, 254, (1989)*).

3. Voluntary Appearance:

A suspect is not "in custody" when they voluntarily come to the police station after being told that they are not under arrest and not required to do so (*Oregon v. Mathiason, 429 U.S. 492, (1977)).*

(Ref: CALEA 1.2.3 items *a & b*)

N. Interrogation:

1. Questioning or the Functional Equivalent:

"Questioning initiated by law enforcement officers" (*Miranda v. Arizona*). The functional equivalent to questioning initiated by officers… "police should know that their statements are reasonably likely to elicit incriminating remarks from the suspect" (*Brewer v. Williams, 430, U.S. 387, (1977)* and *Rhode Island v. Innis, 446, U.S. 291, (1980)).*

2. Conversations with a Spouse in Officer's Presence:

When a suspect in custody is allowed to speak with his wife in the presence of an officer, and the officer tape-records the entire conversation, they are not interrogated or subjected to the functional equivalent (*Arizona v. Mauro, 481, U.S. 520, (1987))*.

3. Questions that do not constitute interrogation (*Pennsylvania v. Muniz, 496 U.S. 582 (1990*)):

   a. neutral questions (i.e., routine booking questions); and

   b. questions of a general investigatory nature (e.g., initial crime scene, general informational questions).

4. Gathering Non-Testimonial Evidence not Affected by Miranda Rule:

   Gathering physical (non-testimonial) evidence does not constitute interrogation; therefore, the *Miranda Rule* does not apply. Examples of non-testimonial evidence are: fingerprints, blood or hair samples, asking the person to perform the physical portion of routine sobriety tests, handwriting samples, and voice exemplars.

   (Ref: CALEA 1.2.3 items *a & b*)

O. Interrogation after Assertion of Rights:

1. If the accused refuses to waive his rights, or initially waives his rights but later reconsiders and invokes his rights to remain silent or right to counsel, the interview must stop immediately.

2. Right to Remain Silent:

   If an accused invokes his right to remain silent, deputy sheriffs should not attempt a second interview until a significant period of time (a two-hour period has been held significant), or the accused requests to be interviewed anew. In either case, deputy sheriffs should ensure that the accused is provided a "fresh set" of *Miranda* warnings and waiver before further questioning begins.

   (Ref: CALEA 1.2.3 items *a & b*)

3. Right to Counsel:

If an accused invokes their right to counsel during the first effort to interview them, deputy sheriffs should not attempt a second interview unless the accused initiates a second interview. The right to counsel is not a one-time right to counsel, but is a continuing right to have counsel present at the interview. Therefore, the accused is presumed to have invoked their right to counsel for all subsequent attempts to interview them as long as they remain in custody (*Edwards v. Arizona, 451 U.S. 477, (1981)*; *Minnich v. Mississippi, 498 U.S. 146, (1990)*; and *Arizona v. Roberson, 486, U.S. 675, (1988))*.

(Ref: CALEA 1.2.3 item *c*)

P. Miscellaneous Cases Related to Miranda:

1. Voluntary Statement:

A voluntary statement made to police by a suspect because, "their conscious bothered them" did not violate the constitutional rights of the defendant (*Colorado v. Connelly, 479 U.S. 157, (1986))*.

2. Rights Belong to the Suspect:

As long as the suspect in custody was advised of their rights, and waived them prior to giving a confession, there was no violation of their constitutional rights despite the fact the suspect's sister had contacted a lawyer and the lawyer contacted the police, at which time the lawyer was misled about when any possible questioning might take place (*Moran v. Burbine, 475 U.S. 412, (1986))*.

3. The Public Safety Exception:

No *Miranda* warnings are required to be given to a defendant in custody prior to asking a question (or a few questions) where officers can justify the need to secure the safety of themselves or others (*New York v. Quarles, 467 U.S. 649, (1984))*.

4. Use of an Informant:

Once the suspect has claimed their right to counsel, the police may not use a cell-mate informant to solicit incriminating information (*United States v. Henry, 447 U.S. 264, (1980))*.

(Ref: CALEA 1.2.3 items *a & b*)

Q. Right to Counsel:

1. The Supreme Court has held that confessions and admissions elicited from a suspect, after the right to counsel has attached, must be suppressed if the incriminating statements were elicited without proper waiver by the suspect of his right to counsel (*Miranda Rule*). The Sixth Amendment right to counsel is different from the request for a lawyer following a *Miranda* advisement. It exists independently of the voluntariness and *Miranda* standards and serves a different purpose. In deciding whether to suppress incriminating statements under the Sixth Amendment, the court considers:

   a. whether the right to counsel has attached at the time of the statement; and

   b. whether the suspect has made an effective waiver of the right if it has attached.

2. The Sixth Amendment right attaches at the commencement of formal adversary proceedings against the accused. The critical stages include indictment, information, or initial appearance to answer a criminal charge (*State v. Hoyte, 413 S.E.2d 806, (1992))*.

(Ref: CALEA 1.2.3 item *c*)

R. Use of Discretion:

1. Discretionary power is the power of free decision or latitude of choice within certain legal bounds. When this power is poorly exercised, discretionary power may be viewed by the public as favoritism, bias, or corruption. Consequently, it is imperative deputy sheriffs take in consideration when exercising discretionary power the goals and objectives of the Sheriff's Office, the best interests of the public they serve, any mitigating circumstances, and the volatility of the situation at hand. Deputy sheriffs must not solely allow a subject's attitude to dictate their use of discretion.

2. Generally, deputy sheriffs may exercise discretion of alternatives to arrest in misdemeanor offenses where a warrant has not yet been issued, but no discretion is allowable in felony offenses or in crimes of

violence where probable cause exists. Deputy sheriffs who need guidance in exercising discretion should refer to procedures or contact a supervisor for assistance.

3. Deputy sheriffs should not exercise discretion in instances which allow a violation of law to continue. (Ref: CALEA 1.2.7)

S. Alternatives to Arrest and/or Pre-Arraignment Confinement:

1. The power of arrest granted to deputy sheriffs is one alternative available to them under circumstances that require some form of law enforcement action. Additional alternatives that are effective and still allow deputy sheriffs an alternative to arrest and/or pre-arraignment confinement include the issuance of citations or the use of court summonses in non-violent criminal situations. §56-7-10 of the S.C. Code authorizes the use of the Uniform Traffic Ticket by all law enforcement officers for all traffic offenses and certain enumerated criminal charges.

2. In lieu of formal action, a deputy sheriff may exercise discretion and choose informal action (e.g., referral, informal resolution, and written warning) to solve the problem.

a. Referral:

The deputy sheriff may offer referrals to other agencies and organizations when in the deputy sheriff's judgment, it is the most reasonable alternative for the offender and the violation. (Ref: CALEA 1.1.3)

b. Informal Resolution:

A deputy sheriff, at their discretion, may offer informal resolutions to situations and conflicts when in the deputy sheriff's judgment they can be adequately resolved by brief on-scene counseling; informing the proper agency or organization; advising parents of juvenile activity, etc. (Ref: CALEA 1.1.3)

c. Written Warnings:

A written warning may be issued by a deputy sheriff when, in the deputy sheriff's discretionary judgment, it is the most reasonable alternative for the offender and the violation.

(Ref: SCLEA 27.1)

3. Release Without Charge:

If an individual is arrested on probable cause and further investigation by the arresting deputy sheriff determines probable cause no longer exists, the individual must be immediately released, and a supervisor notified. If possible, a release from liability form should be signed by the individual. Under no circumstances, however, will the subject's release be contingent upon signing the form. Additionally, the arresting deputy sheriff will prepare a detailed incident report outlining the events surrounding the arrest and subsequent release.

(Ref: CALEA 1.2.6)

T. Bias Based Profiling:

1. Race or ethnicity of an individual shall not be the sole factor in determining:

a. the existence of probable cause to take into custody, cite or arrest an individual;

b. the existence of reasonable and articulable suspicion that an offense has been or is being committed so as to justify the detention of an individual or the investigatory stop of a motor vehicle; and

c. any asset seizure and forfeiture effort.

(Ref: CALEA 1.2.9 item *a*)

2. This prohibition does not preclude the use of race, ethnicity, or national origin as one or more multiple factors in a detention decision when used as part of an actual description of a specific suspect for whom a deputy sheriff is searching.

3. All sworn personnel are required to receive initial and annual training on the agency's Biased Based Profiling procedure.
(Ref: CALEA 1.2.9 item *b*)

4. The Office of Professional Standards will review any complaints of Biased Based Profiling and take corrective action when necessary.

5. The Office of Professional Standards will conduct an annual review of the agency's practices including citizen concerns.
(Ref: CALEA 1.2.9 item c*)*

U. Legality of Biased Based Policing:

1. Biased based law enforcement, commonly referred to as "racial profiling" may involve differential treatment based solely on any number of personal attributes. This would include the stopping of motorist, detention of a person and/or the searching of a vehicle based solely on certain ethnicity or gender. Definitions of legal application are as follows:

    a. Racial profiling is defined as any police initiated action that relies on the race, ethnicity or national origin rather than the behavior of an individual who has been identified as being, or having been, engaged in criminal activity.

    b. Legal profiling is the targeting of suspected criminals for police action based on their conduct, the focus of suspicion on a person of a particular race, or ethnic background when an officer has specific suspect information.

    c. Illegal profiling is the selection of individuals based solely on a common trait. This includes but is not limited to race, ethnic background, gender, sexual orientation, religion, economic status, age, and cultural group. (Ref: CALEA 1.2.9 item *b*)