JOPLIN POLICE DEPARTMENT	6-09 STANDARD OPERATING GUIDELINE
SUBJECT: Constitutional Safeguards	**REVIEW DATE: Annually - June**
EFFECTIVE DATE: March 24, 2011	**ACTION DATE:**
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I. POLICY

Of all the actions an officer might take while on-duty, the ones with the most severe consequences concern constitutional rights. The use of deadly force might result not only in injury or death but a review of the constitutionality of the act. Similarly, the arrest of a person for a misdemeanor shoplifting, by contrast, invokes the law of arrest and search and seizure issues that are controlled by the Constitution. The U.S. Constitution and the Bill of Rights guarantee every citizen certain safeguards from government intrusion into their lives. These safeguards have become the cornerstone for the application of criminal justice in America. Consequently, these safeguards have placed limitations on the authority of police to enforce the laws of the nation, state, and the City of Joplin. The department expects officers to observe constitutional safeguards scrupulously and knowledgeably. The department further expects that officers understand the limits and prerogatives of their authority to act. Respect for the civil liberties of citizens shall be the paramount concern in all enforcement matters.

II. PURPOSE

The purpose of this general order is to define the legally mandated authority for the enforcement of laws, to establish procedures for ensuring compliance with constitutional requirements during criminal investigations, to set forth guidelines concerning the use of discretion by officers, and to define the authority, guidelines and circumstances when officers should exercise alternatives to arrests and pretrial confinement.

III. PROBABLE CAUSE AND REASONABLE SUSPICION

A. Probable cause

Searches (with the few important exceptions outlined in this order) and all arrests are based on the police officer's perception of probable cause. According to the U.S. Supreme Court, "Probable cause exists where the facts and circumstances within their [the arresting officers'] knowledge and of which they had reasonable trustworthy information are sufficient in themselves to warrant a man of reasonable caution in the belief that an offense has been or is being committed."

1. An officer must have probable cause to undertake a search or make an arrest.

2. When an officer has appropriate probable cause, he or she may undertake a complete body search (not including a body-cavity search), record the suspect's fingerprints, take the suspect's photograph, and jail him. The aim of probable cause is **to make a formal charge**.

B. Reasonable suspicion

Reasonable suspicion involves a standard less than probable cause, generally defined by the courts as a circumstance or collection of circumstances that would lead a trained, experienced officer to believe that criminal activity may be afoot.

1. An officer must have reasonable suspicion to temporarily detain a citizen.

2. When an officer has reasonable suspicion, he or she may undertake a pat-down of a suspect's outer clothing for weapons and record the circumstances of the encounter. The aim of reasonable suspicion is **to resolve an ambiguous situation**.

C. Elements of probable cause

1. Probable cause may be established through investigation and observation, witnesses, confidential informants, or through anonymous sources provided that the information is corroborated by investigation.

2. Unnamed informants may be used in an affidavit for a search warrant if the informant has first-hand knowledge of the investigation and information is included about why the informant is credible and reliable. See SOG 9-05 for further information on informants.

IV. PROCEDURES - General

A. Law-enforcement authority

1. *Missouri Revised Statutes (RSMo)* § 71-200 authorizes all cities within the State the power to appoint a police force. Section 2.15 (5) of the City of Joplin's Code of Ordinances gives the City Council the power to adopt, establish and maintain a police department. Section 3.08 invests the police force of the City of Joplin with authority to preserve peace and order, enforce the city ordinances, prevent crime, detect and apprehend violators of all laws and ordinances, regulate traffic and perform such other duties relating to public peace, order and safety as the council shall prescribe. (1.2.1)

2. Section 15.10 of the City Code requires that all officers, before performing their duties, take an oath whereby they swear to support the constitution and laws of the United States and the State of Missouri, and the charter and ordinances of the City of Joplin. (1.1.1)

B. Limitations on law enforcement authority (1.2.1)

Limitations on law enforcement authority are derived from statutes, federal, state, and local judicial interpretation of laws, opinions of the attorney general, departmental policies/rules and regulations, and decisions of the City Council.

1. Statutory limitations

These limitations include, but are not limited to:

a. Enforcement of laws outside of the City limits: § 70-820 RSMo. and City Code Section 70-35 grants authority to respond to an emergency situation outside the City limits when authorized by ordinance, order, or other ruling by the City of Joplin and by the governing body of the political subdivision in which the emergency situation is alleged to be occurring.

b. Authority to arrest anywhere in the State: § 70-820 RSMo. gives officers the authority to arrest on view, and without a warrant, at any place within this state, any person the officer sees asserting physical force or using forcible compulsion for the purpose of causing or creating a substantial risk of death or serious physical injury to any person or any person the officer sees committing a dangerous felony as defined in section 556.061, RSMo.

c. Disaster emergency response powers: (City Code § 70-36) The chief of police or highest ranking officer of the police department of the city may render aid to any requesting public safety agency in the state or in a bordering state at the time of a significant emergency such as a fire, earthquake, flood, tornado, hazardous material incident or other such disaster. The chief or highest ranking officer of the police department may render aid to any requesting agency as long as he is acting in accordance with the policies and procedures set forth by the governing body of that public safety agency.

2. Judicial limitations

Courts constantly interpret laws that place limitations on the authority of law-enforcement officers. The more common limitations address *Miranda* rights/warnings, rulings on search and seizure, eyewitness identification, and lineups. The department shall provide policy guidance concerning these decisions, as appropriate.

V. EYEWITNESSES

A. Eyewitness identification generally does not provide reliable evidence during criminal investigations. Consequently, the Supreme Court has addressed this issue in numerous cases and set forth guidelines to be followed when officers solicit eyewitness identifications. Eyewitness identifications may take the following form.

1. On-scene identification/Show-up

One-on-one identifications have been held constitutional so long as the period of time between the offense and the identification is brief. One to three hours would be a reasonable amount of time. (42.2.12.a)

a. If a potential suspect is located, then the victim/witness should be transported to the location of the potential suspect for possible identification by an officer or a detective. (42.2.12.b)

b. If there is more than one victim/witness, then they should be transported separately to the location of the possible suspect for identification. (42.2.12.c)

c. The victim/witness should be instructed that just because a subject has been located, it does not mean that the person has been identified as the person that committed the crime. (42.2.12.d)

d. If a positive identification is made, the officer shall document the level of confidence expressed by the victim/witness as well as the demeanor of the victim/witness. The officer administering the show-up is prohibited from providing any feedback about the show-up results to the victim/witness. Once the show-up process is complete, the officer administering the show-up will record the results of the show-up, in the incident report narrative. (42.2.12.e, f, g)

e. Once the show-up process is complete, the officer should return the victim/witness to their original location.

2. Lineups

Lineups should be conducted using a minimum of six persons having similar physical characteristics as the suspect. The accused has the right to have an attorney present during the lineup and the lineup may not take place until the attorney is present. The attorney may

not offer any suggestions concerning the conduct of the lineup, but may merely observe. Officers shall document the date, time, place, name of participants and witnesses, and the location of suspect/participants in the lineup. Victim/ witness responses during lineups must be either video or audio taped.

3. Photo lineups

In conducting photo lineups, the photos shall depict persons displaying similar physical characteristics as the suspect. Simply showing an eyewitness a single photo of the suspect has been ruled unconstitutional. As a general rule, a photo lineup containing 6 photos is reasonable. Photographs shown to witnesses shall not contain any identifying information. Photo lineups will be documented as under (2) above. Victim/ witness responses during photo lineups must be either video or audio taped.

Preparation of Photo Lineups (42.2.11.a)

a. When possible, photo lineups should be shown by an investigator that does not know who the suspect is. At no time, shall the lead investigator be the one to show the photo lineup.

b. The sequential lineup packet will consist of a photograph of the suspect and 5 "filler" photos of persons unconnected to the incident under investigation.

c. If multiple photographs of the suspect are available, detectives will select the photograph that most resembles the suspect description or appearance at the time of the incident.

d. All photos should be the same size; no photo should unduly stand out from the others.

e. Once selected, all of the photographs will be copied individually onto separate sheets of paper.

f. If multiple suspects are involved, a separate lineup packet must be prepared for each suspect to be presented to the witness.

g. In cases where one witness will view multiple lineups containing different suspects, detectives will ensure that different "filler" photographs are used in each lineup packet.

h. If multiple witnesses will be shown a lineup containing the same suspect, there also must be a separate lineup packet assembled for each witness. (42.2.11.c)

i. The detective may use the same "filler" photographs in each packet, (when there will be no time delay or opportunity for communication), color copies will be made and placed in a separate packet for each witness. (42.2.11.c)

j. In cases where there is a time delay between showing the lineups or when there is an opportunity for witnesses to communicate after one has viewed the lineup, the "filler" photo labeled as number one should be changed by the investigating detective and the lineup administrator should randomize the remaining photos. (42.2.11.c)

Administration of Photo Lineups

a. No information on the identity of the suspect will be revealed to the detective administering the lineup (when possible).

b. Detectives will attempt to schedule lineups at facilities with video and audio recording equipment if possible. (42.2.11.b)

c. The detective administering the lineup will give instructions to the victim/witness by verbally reading the admonishment form (SOG 6-09 Appendix 1) to the victim/witness and determine if they understand. The victim/witness will then be asked to sign and date the form. (42.2.11.d)

d. If the victim/witness is a child and not capable of comprehending the instructions in the admonishment form, the detective does not have to read the form to the child.

e. The detective administering the lineup will avoid any actions or comments that could be construed as an attempt to influence a victim/witness to select a particular photo.

f. If the victim/witness identifies someone the detective administering the lineup will then ask the victim/witness to describe in their own words how confident they are of the identification. (42.2.11.e) Even if someone is identified all of the photographs in the series will be shown.

g. The detective administering the lineup is prohibited from providing any feedback about the lineup results to the victim/witness. Once the sequential lineup process is complete, the detective administering the lineup will record the results of the sequential lineup, initial the back of each photograph for lineup verification in court and sign the Results Report (SOG 6-09 Appendix 2). (42.2.11.f, g)

h. The lead detective will return to the victim/witness and answer any questions or conduct further interview with the victim/witness.

i. The lead detective will maintain the lineup packet in the case file until it is placed into evidence.

B. Hearsay

1. Officers shall understand the rules by which hearsay can be considered evidence and therefore of use in an investigation.

   a. Hearsay is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.

2. Hearsay is generally inadmissible in court.

3. Some hearsay is useful as evidence. Some exceptions to the Hearsay Rule, and therefore admissible include:

   a. A dying declaration or a statement, oral or written, made by a mortally wounded person who knows that he is about to die and has abandoned hope of recovery.

   b. Spontaneous declarations, or exclamations of a participant or bystander concerning an incident, made without time for reflection.

c. Public records, or reports prepared by public officials under a duty imposed by law or regulation.

d. A statement made by a child under the age of twelve relating to an offense under chapter 565, 566 or 568, RSMo., performed with or on a child by another, not otherwise admissible by statute or court rule, is admissible in evidence in criminal proceedings in the courts of this state as substantive evidence to prove the truth of the matter asserted under conditions stated in Section 491.075 RSMo.

VI. LIMITATIONS ON AUTHORITY

A. Limitations on law-enforcement authority by local courts

Occasionally, the local courts may limit law-enforcement authority to enforce state statutes and local ordinances. The department manual shall contain relevant orders offering appropriate guidance to officers. These limitations include, but are not limited to:

1. The enforcement of certain parking ordinances.

2. The handling of juvenile offenders.

3. The issuance of summonses as opposed to arrests/incarceration.

B. Limitations on law enforcement authority by the city's attorney

Occasionally, the city attorney may issue opinions to the department imposing limitations on officers. These areas include, but are not limited to:

1. Prosecution of certain cases.

2. Extradition.

3. Enforcement of certain statutes pending opinions from the attorney general's office.

C. Limitations on law-enforcement authority by the city manager or chief of police

Limitations may be imposed on police enforcement actions by the city council, city manager, or the chief of police.

D. Changes in laws/interpretational limitations

Periodically, changes take place, which may impose new limitations on police authority or remove or alter existing limitations.

VII. CONSTITUTIONAL REQUIREMENTS: GENERAL

A. Compliance with constitutional requirements during criminal investigations (1.2.3 A, B, C)

1. All officers when conducting criminal investigations shall take all precautions necessary to ensure that all persons involved are afforded their constitutional protections. Officers shall ensure that:

a. All statements or confessions are voluntary and non-coercive.

b. All persons are advised of their rights in accordance with applicable law.

c. All arrested persons are taken promptly before a magistrate for formal charging.

d. All persons accused or suspected of a criminal violation for which they are being interrogated are afforded an opportunity to consult with an attorney.

e. Prejudicial pre-trial publicity of the accused is avoided so as not to interfere with a defendant's right to a fair and impartial trial. See SOG 4-01, Public Information.

B. The use of discretion by sworn officers (1.2.7)

1. Officers, by the nature of their job, are required to exercise discretion in the performance of their duties. The department provides officers with written policies, rules, departmental orders, directed patrol assignments, and training in order to aid them in making decisions, which govern discretion in performing their duties.

2. With the exception of rules and regulations, general orders give officers procedures to follow for common or critical enforcement tasks. By definition, general orders afford officers a window of discretion within which to act. General orders are to be followed unless unusual or extreme circumstances dictate another course of action. In this case, officers shall make reasoned decisions in their discretion based on good judgment, experience, and training. It is up to the individual officer to consider the relevant facts, the situation, and then, using knowledge, training, and good judgment, make appropriate decisions. Supervisors must closely observe the use of discretion by their subordinates and point out factual errors or alternatives that may be more appropriate.

C. Sworn personnel may exercise alternatives to arrest/pre-arraignment confinement (1.2.6)

1. Under certain circumstances, officers are faced with situations where an arrest and pre-arraignment confinement will not be possible. In such cases, officers may elect to exercise certain alternatives such as the issuance of summonses, referral to a social service agency (1.1.3, 1.2.1), or simply to give a warning. Examples:

a. Mentally or emotionally disturbed persons. (1.1.3)

b. Domestic situations where counseling may be appropriate except where probable cause requires an arrest. (1.1.3)

c. Juvenile offenders. See SOG 9-09, Juvenile Procedures. (1.1.3)

d. Transient persons who need shelter and food.

e. Certain misdemeanor cases.

2. Issuance of summonses in lieu of arrest/confinement (1.2.1, 1.2.6)

a. In determining whether a summons should be used, the officer shall:

i. Decide whether the offense committed is serious.

ii. Make a judgment as to whether the accused poses a danger to the public or him/herself.

iii. Decide, based on circumstances, whether the person may disregard a summons.

3. Informal handling of criminal matters (1.2.1, 1.2.6)

Officers often deal with situations where the public interest would be better served by social service agencies or crisis and professional organizations. When in the judgment of the officer a better solution to the problem will be achieved by use of alternatives to enforcement, he or she should refer the citizen to an appropriate social services agency.

4. Use of warnings as an alternative to arrest (1.2.1, 1.2.6)

The use of warnings may sometimes provide a solution to a problem and may enhance the public perception of the department. Normally, the use of a warning occurs in traffic offenses, but occasionally may be applied to criminal offenses. In determining if a warning should be issued, the officer shall consider:

a. The seriousness of the offense.

b. The likelihood that the violator will heed the warning.

c. The reputation of the violator, i.e., known repeat offender, has received previous warnings, etc.

5. Limitations on intelligence activity

a. Departmental intelligence gathering activities shall be limited to that information concerning criminal conduct that presents a threat to the community.

b. Departmental personnel and equipment shall only be used in conjunction with intelligence gathering activities, as defined above, in full compliance with all law, and only with the advance approval of the chief of police.

c. Intelligence information shall be collected, used, and processed in full compliance with all laws.

d. For information on Informants, see SOG 9-05.

VIII. COMPLIANCE

Violations of this policy, or portions thereof, may result in disciplinary action as described in the City of Joplin's Personnel Rules or the Joplin Police Department's Rules and Regulations and General Orders. Members of the Joplin Police Department, while assigned to or assisting other agencies shall comply with this policy.

IX. APPLICATION

This document constitutes department policy, is for internal use only, and does not enlarge an employee's civil or criminal liability in any way. It shall not be construed as the creation of a higher legal standard of safety or care in an evidentiary sense, with respect to third party claims insofar as the employee's legal duty as imposed by law. Violations of this policy, if proven, can only form a basis of a complaint by this department, and then only in a non-judicial administrative setting.

JOPLIN POLICE

Reference Case #:_____

Read the following to the witness:

You are about to view a photo lineup. The fact that these photographs are being shown to you should not cause you to believe or guess that the guilty person(s) has been identified or arrested. The person who committed the crime *may or may not* be in this lineup. While looking at the photographs keep in mind that the individuals may not appear exactly as they did on the date of the crime. Their hairstyles, facial hair, clothing, etc., may have changed. The investigation will continue whether or not you make any identification.

In the lineup process, the individuals will be shown to you one at a time and are not in any particular order. Take as much time as you need to look at each one. After each individual, I will ask you "Is this the person you saw (describe act)?" Take your time answering the question. If you answer yes, then I will ask you, "Can you describe in your own words how confident you are of the identification?" Even if you identify someone, I will continue to show you all of the photographs in the series. Do you understand the procedure and other instructions I have given you?

I, _____ understand the above information. On the _____ day of _____, 20_____, at ___o'clock (__.m),

This lineup was shown to me at _____and it contained _____, persons.

Officer presenting Lineup: _____

Officer (any other officer present): _____

SOG 6-09 Appendix 1

Sequential Lineup Results Report

Case #_____ **Date of Lineup:_____**

Victim/Witness response:

First Viewing

Photograph #1:	**Yes____**	**No____Not Sure_____**
Photograph #2:	**Yes____**	**No____Not Sure_____**
Photograph #3:	**Yes____**	**No____Not Sure_____**
Photograph #4:	**Yes____**	**No____Not Sure_____**
Photograph #5:	**Yes____**	**No____Not Sure_____**
Photograph #6:	**Yes____**	**No____Not Sure_____**

Second Viewing

Photograph #1:	**Yes____**	**No____Not Sure_____**
Photograph #2:	**Yes____**	**No____Not Sure_____**
Photograph #3:	**Yes____**	**No____Not Sure_____**
Photograph #4:	**Yes____**	**No____Not Sure_____**
Photograph #5:	**Yes____**	**No____Not Sure_____**
Photograph #6:	**Yes____**	**No____Not Sure_____**

Victim/Witness viewed the sequential Line-up: **One Time**
Two Times

Video/Audio Taped: **Yes____** **No____**

If identification was made, which position (number) was the identified photograph in: Number____
Victim/Witness statement in their own words of how confident they are of the identification:_____

_____

_____

_____

No ID Made_____

Administrator's observation report of victim/witness behavior during the lineup presentation:_____

_____

_____

_____

Line-up Administrator:_____
Date:_____ **Time:_____**

SOG 6-09 Appendix 2