CURTAILING THE USE OF PRETEXT STOPS

9.07.01
PURPOSE

The San Francisco Police Department's traffic enforcement efforts shall focus on ensuring the safety of our sidewalks and roadways. To that end, the goal of this General Order is to curtail the practice of stopping vehicles for low-level traffic offenses as a pretext to investigate hunches that do not amount to reasonable suspicion that a crime occurred. Pretext stops are disproportionately carried out against people of color and return negligible public safety benefits. The fiscal, human, and societal costs they impose on our City are unjustified in light of more effective public safety tools at the Department's disposal.

Reducing the number of stops made for low-level offenses will allow the Department to redirect resources and time to more effective public safety strategies, including prioritizing traffic safety to reduce injuries and fatalities, while also helping to fulfill its obligation to accord every person equal treatment under the law.

9.07.02
DEFINITIONS

A. **Pretext Stop.** A pretext stop occurs when a member conducts a traffic stop as a pretext to investigate whether the person stopped is engaged in criminal activity unrelated to the traffic violation.

B. **Biased Stop.** A stop in which a member inappropriately considers characteristics such as race, ethnicity, national origin, religion, sex, sexual orientation, gender identity or expression, socio-economic status, age, cultural group, or disability, in deciding whether to initiate a stop. (*See* DGO 5.17 § II.B.).

C. **Reasonable Suspicion.** A set of specific and articulable facts and circumstances that would lead a reasonable person to believe that a crime has occurred, is occurring, or is about to occur and the person to be stopped is involved in the crime. Reasonable suspicion cannot be based solely on a hunch or instinct. (*See* DGO 5.03.02(D)).

D. **Probable Cause.** A set of specific facts that would lead a reasonable person to objectively believe and strongly suspect that a person committed a crime. (*See* DGO 5.03.02(G)).

E. **Investigatory Question.** A question or statement that is intended to elicit, or is reasonably likely to elicit, information relevant to a criminal investigation or criminal activity. Whether a question or statement is investigatory will depend on the specific facts and circumstances of each case. *Examples.* Questions such as

"where are you coming from?" or "where are you going?" are generally investigatory. Conversely, asking "how is your day going?" is not investigatory.

F. **Criminal Offense**. Any misdemeanor or felony.

9.07.03
POLICY

A. **Pretext Stops Limited.** Pretext stops produce little if any public safety benefits, while imposing substantial fiscal and societal costs. They may only be used in a manner that is consistent with this policy.

B. **Biased Stops Banned.** Biased stops are illegal, unconstitutional, and contrary to the Department's values. They are banned under all circumstances. (*See* DGO 5.17).

C. **Stops Based on Reasonable Suspicion or Probable Cause.** Except for those specified violations listed in 9.07.04(A), nothing in this DGO prevents members from initiating a stop for any infraction or criminal offense based on reasonable suspicion or probable cause. (*See* DGO 5.03).

9.07.04
LIMITING STOPS FOR LOW-LEVEL OFFENSES

A. Except as provided in 9.07.04(B), a member shall not stop or detain the operator of a motor vehicle solely based on one or more of the following nine (9) categories of violations:

1. A vehicle that has a rear license plate with the plate number clearly visible. (Cal. Veh. Code §§ 5200(a), 5201(a)). *Note:* Members may stop vehicles for these violations in all other circumstances, including where a vehicle has no license plates or only has a front license plate and no rear license plate.

2. A vehicle that fails to display registration tags or is driving with expired registration of ~~more~~ less than one (1) year. (Cal. Veh. Code §§ 4000(a)(1), 5204(a)). *Note:* Members may stop vehicles for either of these violations if the vehicle's registration has been expired for one (1) year or more.

3. A vehicle that fails to illuminate the rear license plate. (Cal. Veh. Code § 24601).

4. A vehicle that is driving without functioning or illuminated rear taillights. (Cal. Veh. Code § 24600). *Note:* Members may stop vehicles for this

violation if the vehicle has no functioning or illuminated rear taillights during ~~sundown~~darkness.

5. A vehicle that is driving without functioning or illuminated rear brake lights. (Cal. Veh. Code § 24603). *Note:* Members may stop vehicles for this violation if none of the vehicle's brake lights are functioning or illuminated.

6. A vehicle that has objects affixed to windows or hanging from the rearview mirror, unless the object obstructs the driver's vision such that it creates a condition that substantially increases the likelihood of a crash. (Cal. Veh. Code § 26708(a)(1)-(2)). *Examples*: A hanging air freshener or prayer beads from the rear-view mirror will not generally create a condition that substantially increases the likelihood of a crash. Conversely, affixing an electronic GPS device to the windshield that creates a vision-obstructing glare while driving at night (*see* Cal. Veh. Code § 26708(b)(12)) may create a condition that substantially increases the likelihood of a crash.

7. A vehicle that fails to activate a turn signal continuously for 100 feet before turning. (Cal. Veh. Code § 22108). *Note:* Members may stop vehicles for unsafe turns or lane changes. (*E.g.* Cal. Veh. Code § 22107).

8. A vehicle that has a person sleeping in the vehicle. (S.F. Trans. Code § 97). *Note:* Members may make a stop for this code violation when another City agency (including HSOC, MTA, or Public Health) requests that the Department do so.

9. Any stop of a pedestrian for an infraction in violation of the California Vehicle Code or San Francisco Transportation Code unless there is an immediate danger that the pedestrian will crash with a moving vehicle, scooter, bicycle, or other device moving exclusively by human power.

Nothing in section 9.07.04(A) above prohibits a member from taking any of the following actions so long as it does not result in an investigative detention as defined in DGO 5.03: (a) issuing a citation to a parked car, (b) warning an individual that their conduct is in violation of the law, (c) requesting that an individual conform their conduct to the law, or (d) mailing a citation as permitted by state and local law.

B. **Exceptions**. A member may stop, detain, or issue a citation to a person or an operator of a motor vehicle for any violation enumerated in section 9.07.04(A) above if:

1. the member lawfully stopped or detained the person or operator of the motor vehicle for any infraction or criminal offense not specifically enumerated in section 9.07.04(A); or

2. the operator is driving a commercial vehicle; or

3. a person or motor vehicle matching the description of a suspect or suspect vehicle involved in a felony offense where the risk of death or life-threatening injuries is imminent if the suspect is not immediately apprehended, including murder, attempted murder, manslaughter, armed robbery, kidnapping, forcible sex offense, a felony committed against a child; or.

4. the member is investigating a traffic crash as outlined in Cal. Veh. Code § 40600(a).

9.07.05
LIMITING SEARCHES & QUESTIONING

A. During a traffic stop for a violation punishable as an infraction under either the California Vehicle Code or San Francisco Transportation Code, members shall only ask investigatory questions regarding criminal activity if reasonable suspicion or probable cause for a criminal offense arises during the traffic stop. (*Example*: During a routine traffic stop, officers smell the odor of an alcoholic beverage on the driver's breath, they may then begin to ask investigatory questions about a potential DUI violation). Nothing in this DGO shall prohibit a member from asking a driver for their license, registration, or proof of insurance.

B. During a traffic stop for a violation punishable as an infraction under either the California Vehicle Code or San Francisco Transportation Code, members shall only ask for permission to conduct a consent search of a person or vehicle if reasonable suspicion or probable cause for a criminal offense arises during the stop.

C. **Exceptions.** The above limits on searches and questioning set forth in section 9.07.05(A)-(B) shall not apply to stops made pursuant to section 9.07.04(B)(2)-(B)(4).

9.07.06
DATA COLLECTION, REPORTING & SUPERVISORY REVIEW

A. Nothing in this DGO shall require a member to write an incident report if it is not otherwise required by another Department policy. Any member who requests consent to search an individual or asks an investigatory question unrelated to the purpose of the stop under section 9.07.05(A)-(B) shall document the following in an

incident report and/or chronological report of investigation: (a) the reason for the stop, and (b) the circumstances justifying a request to conduct a consent search and/or asking any investigatory questions. If an incident report is not otherwise required, members shall memorialize (a) and (b) in CAD and on their body-worn camera.

B. Members shall enter all stop data into the Stops Data Collection System (SDCS) prior to the end of their shift, unless exigent circumstances prevent entry, in which case, members shall enter data by the end of their next shift.

C. Superior officers are responsible for reviewing traffic stop data for members under their direct supervision (PIP Group) on a quarterly basis.

D. On a quarterly basis, the Department must transmit to the Commission and to the Department of Police Accountability all raw SDCS data (other than personal identifying information) containing the information that the Department must collect pursuant to Cal. Gov't Code § 12525.5, Cal. Code Regs. tit. 11, § 999.226, and any other related laws governing stop data collection. The Department shall also make this raw data publicly available on its website in a machine-readable format.

References
DGO 5.03
DGO 5.17