



VANCOUVER POLICE DEPARTMENT

REPORT TO THE VANCOUVER POLICE BOARD

REPORT DATE: January 13, 2020
BOARD MEETING DATE: January 23, 2020
BOARD REPORT # 2001P01
Regular

TO: **Vancouver Police Board**

FROM: Drazen Manojlovic, Director, Planning, Research & Audit Section

SUBJECT: Addition to the Regulations and Procedures Manual Section 1.6.53 *Conducting and Documenting Street Checks (and Police Stops)*

RECOMMENDATION:

THAT the Vancouver Police Board (VPB) receive this report for information given that the VPB was required to electronically discuss and approve the addition to the Regulations and Procedures Manual (RPM) Section 1.6.53 *Conducting and Documenting Street Checks (and Police Stops)*

SUMMARY:

In October 2019, the Government of British Columbia (BC) issued the new British Columbia Provincial Policing Standards (BCPPS) 6.2.1 *Police Stops* (“Standard” – see Appendix A) which took effect on January 15, 2020, and applies to all police departments in BC. The Vancouver Police Department (VPD) began drafting policy and developing training immediately, and the VPB was required to electronically discuss and approve the policy prior to the Standard’s January 15th effective date. This electronic discussion and approval was also required because the VPB’s first meeting in 2020 is on January 23rd, and the discussion and approval occurred on January 7th.

The addition to the RPM (s. 1.6.53 *Conducting and Documenting Street Checks (and Police Stops)*) provides direction to VPD members regarding street check practices in order to ensure compliance with the Standard. In short, the policy specifies the following (but is not limited to):

- Police officers cannot stop someone based solely on an identity factor;
- Random or arbitrary stops are not permitted;
- That officers need a “justifiable reason” to demand or request identifying information;
 - The term ‘justifiable reason’ is defined both for requests where the officer has a legal authority to demand the identifying information, and for those interactions (i.e., street checks) where the information can only be provided voluntarily;
- The steps an officer must take to ensure a person is aware of their rights during a street check;

- During a street check, the officer must have a specific public safety purpose to ask a person for identifying information and must inform the person of that reason; and
- The manner in which the recording of street checks and of any identifying information occurs.

The VPD developed training material based on the policy and it has been delivered to members.

DISCUSSION:

It is important to reiterate the value of street checks as a proactive public safety tool. There are many documented cases where a street check was ultimately the key to solving investigations ranging from property crime to serious violent crimes, including homicides.

A recent example occurred on December 3, 2019, when at approximately 5AM in Vancouver's Kitsilano neighbourhood, two officers observed a male "looking into vehicles" and at which point the male walked towards a specific address. The officers asked the male if he lived at the address and the male replied "no". The officers asked to speak to the male and as they approached him the male ran away.

He was located shortly thereafter and arrested as there was a warrant for Breach of Probation for him (also, the male was in possession of bear spray). The male has a criminal background where he has been the suspect in 25 criminal incidents where charges were either recommended against him or were approved by Crown Counsel. Most of the approved charges were for property crime offences (e.g., break and enter, possession of stolen property, theft, etc.) with one assault with a weapon or cause bodily harm.

It is these types of suspicious behaviours (e.g., looking into vehicles, etc.) that police officers regularly observe and proactively investigate, and the new Standard on Police Stops would potentially affect this type of investigation.

Nonetheless, there have been concerns about the practice of street checks in Nova Scotia, Quebec, Ontario, Saskatchewan, Alberta, BC, and the United States (US). It is these concerns that the Standard and the VPD policy seeks to address.

Sections of the Policy Addressing Street Check Concerns

The Standard addresses themes of arbitrary police stops, discriminatory practices, the collection of identifying information, and the rights of citizens during police stops. The approved policy gives direction and clarity to VPD members about these concerns and how they are operationalized into street check practices, while remaining compliant with the Standard, specifically:

Arbitrary Police Stops

The public dialogue in relation to arbitrary police stops reaches across the country. Since 1982, section 9 of the *Canadian Charter of Rights and Freedoms* has provided all citizens with the right "not to be arbitrarily detained or imprisoned". This value is reflected in the Standard by Standards 1 and 5, and these standards are addressed in the proposed policy under the "Policy" heading (for Standard 1) and section 3 of the policy (for Standard 5).

Biased Police Stops

An overlapping issue about police stops that the Standard attempts to address is the perception of biased policing. Unlike arbitrary police stops, which are an overly broad application of policing, a biased police stop is one narrowly conducted on an inappropriate assessment of an identity factor – such as a police stop conducted solely on the basis of race, social, or economic status. Standard 4 of the Standard requires agencies to specifically prohibit decisions to conduct police stops based solely on the person stopped sharing an identity factor with a person being sought by the police. Section 2 of the policy addresses Standard 4.

Collection of Identifying Information

The collection of identifying information from a person is justifiable in relation to a lawful detention, arrest, statutory authority, or other existing legal authority. The Standard permits the collection of identifying information during a voluntary interaction, such as a street check, when the officer reasonably believes that the interaction and requested information, serves a specific public safety purpose. This is addressed in Standards 6, 7, and 8 of the Standard, and are addressed in the proposed policy in sections 10 and 11.

Rights of a Person during a Street Check

It is acknowledged that a street check can be a stressful event for citizens. Not everyone who is stopped (and not formally detained) by the police will understand that they have the right to proceed on their way without answering questions. If a person reasonably but erroneously believes they have no choice but to cooperate with the police, Canadian law will find a psychological detention has occurred. It is important for police officers to ensure that the person's cooperation is voluntary.

These requirements are reflected in Standards 2 (a) and (b) of the Standard. The proposed policy includes information on lawful detention authorities and a definition of psychological detention. The proposed procedure provides members with steps to ensure that street check interactions are voluntary; including, without limitation, advising the person that they are not required to answer any questions or provide any identifying information, and are free to walk away. The proposed policy also lists factors that may contribute to a person subjectively experiencing a psychological detention (sections 5, 6, and 7).

Discriminatory Practices

A series of studies concluded that street checks in Ontario reflected racial profiling and biased policing. Similarly, a 2015 submission on street checks submitted to Ontario's Ministry of Community Safety and Correctional Services (MCSCS) by Legal Aid Ontario argued that police street checks disproportionately impact persons from racialized communities and vulnerable groups. These concerns are reflected in Standards 1, 3, and 4 of the Standard, and the proposed policy addresses these concerns under the "Policy" heading and in sections 1 and 2.

CONCLUSION:

In BC, and across Canada and the US, there has been attention on police street check practices. The development of provincial policing standards to promote unbiased policing includes a Standard that addresses street checks, which is reflected in RPM 1.6.53 *Conducting and Documenting Street Checks (and Police Stops)*. This policy provides direction to members in order to provide clarity and consistency in VPD street check practice, and that is compliant with the Standard, and the Standard applies to all police in BC.

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Submitting Executive Member:

DCC Howard Chow Date: January 13, 2020

Appendix A



BCPPS 6.2 Police Stops

In British Columbia and across Canada, there has been critical attention on the police practice often referred to as street checks and in particular the over-representation of Indigenous persons and racial minorities amongst persons who have been the subject of a street check. The Director of Police Services is addressing this matter through provincial policing standards on the promotion of unbiased policing, which are currently under development. This work is moving forward in consultation with police and community-based organizations.

While this work continues, the Director of Police Services has established the following Standards on Police Stops, as an interim approach, to provide direction to British Columbia police agencies on key areas and promote consistency in police practices throughout the province. Policing and law enforcement services in BC must be delivered in a manner that respects rights and is free of discrimination.

The term police stops is intended to refer to any interaction between a police officer and a person that is more than a casual conversation and which impedes the person's movement. A stop may include a request or demand for identifying information depending on the circumstances.

While stops cannot be random or arbitrary unless authorized by law, or based on a person's race, social or economic status, there are situations where police have the legal authority to require a person to stop consistent with existing obligations to ensure a person's rights are upheld during the stop. Officers are not permitted to request or demand, collect, or record a person's identifying information without a justifiable reason.

The Standards also require police agencies to provide written direction to police officers regarding interactions that may result in a request for a person to voluntarily provide identifying information. The officer must reasonably believe there is a public safety purpose or objective they are attempting to address, and the officer must explain the reason to the person. It is also the responsibility of the officer to take steps to ensure that the person understands their right to not answer questions and to walk away. Many people stopped by a police officer will feel compelled to remain and answer questions, regardless of the circumstances. This is especially the case when the person stopped is vulnerable, relies on public space to live, is Indigenous or racialized. Informing a person that their participation is voluntary may not be sufficient on its own and additional steps may need to be taken to ensure the person does not feel compelled to cooperate.

The Standards do not yet cover all aspects of police stops that are important to address, such as where and how long records of voluntary interactions are kept. Work on comprehensive Standards to address these matters is continuing.

Section 6.0 – Promotion of Unbiased Policing	Page 1 of 3
Sub Section 6.2 – Police Stops	Effective: January 15 2020
Subject 6.2.1 – Police Stops	Revised: n/a

Standards

Police obligations when interacting with the public

The police board or, in the case of the provincial police force, the commissioner, must ensure that:

- (1) Written policy recognizes the responsibility of police officers to ensure that their interactions with community members, while critical to fulfilling their duties, must be consistent with the *Canadian Charter of Rights and Freedoms* (sections 7, 9, 10 and 15) and the values they reflect, including the right to be free from arbitrary arrest and detention; to move freely in society subject only to reasonable restrictions imposed by law; and to equal protection and benefit of the law, without discrimination.

Procedures to safeguard rights during police interactions

The chief constable, chief officer, or commissioner must ensure that:

- (2) Written procedures provide direction to officers and supervisors, consistent with current case law, on the limits of, and obligations related to, the authority to detain a person, including:
 - (a) a description, consistent with case law, of the elements or personal circumstances contributing to a person subjectively experiencing psychological detention; and
 - (b) the steps an officer should take to fulfill their duty of care to ensure a person understands their rights.

Decision to stop must not be based on identity factors alone

The police board or, in the case of the provincial police force, the commissioner, must ensure that:

- (3) Written policy establishes that the decision to stop a person must not be based on 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.

- (4) Further to Standard (3), written policy establishes that the decision to stop a person must not be based solely on that person sharing an identity factor, such as race, with a person being sought by police.

Random or arbitrary stops not permitted

- (5) Written policy establishes that random or arbitrary police stops, which may or may not include a request for or the collection or recording of a person's identifying information, are not permitted, unless authorized by law or case law.

Collection of identifying information

- (6) Written policy establishes that officers are not permitted to request or demand, collect, or record a person's identifying information without a justifiable reason.
- (7) Justifiable reasons referred to in the written policy include circumstances where the request or demand for identifying information is consistent with existing legal authorities and related limitations granted to officers, such as:
- (a) as permitted or required by provincial or federal legislation or regulations;
 - (b) a traffic stop, consistent with statutory and common law;
 - (c) an arrest;
 - (d) an attempt to execute a warrant against the person; or
 - (e) 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.
- (8) The written policy may also permit interactions that may result in a request for a person to voluntarily provide identifying information, provided that:
- (a) the officer reasonably believes the interaction, and any information requested, serves a specific public safety purpose, including:
 - (i) assisting in locating a missing person,
 - (ii) an objectively reasonable concern for a person's immediate safety,
 - (iii) assisting a person in distress to refer them to health, substance use, mental health or other supports or services, or
 - (iv) as part of the response to a call for service.
 - (b) the officer informs the person of the reason or purpose of the interaction or the request; and
 - (c) the officer 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.

Refusal to cooperate

- (9) Written policy establishes that police interactions with a person where there is no lawful authority to detain or arrest the person are voluntary, and the person is free to go and their refusal to stay or answer questions does not justify further law enforcement action.

Documentation of interactions

The chief constable, chief officer, or commissioner must ensure that:

- (10) The written procedures of the police force require that interactions are recorded in the Police Records Information Management Environment (PRIME) according to the most relevant scoring code or rules, and in sufficient detail to articulate and demonstrate the reason for the interaction.
- (11) An audit of a representative sample of interactions that resulted in a voluntary request for identifying information described in Standard (8) above is conducted at least annually.
- (12) The audit under Standard (11) must include consideration of:
- (a) whether the scoring is appropriate to the circumstances of the interaction;
 - (b) whether the reasons for the interaction and the request for identifying information have been articulated sufficiently;
 - (c) whether the inclusion of identifying information in the record is justifiable;
 - (d) providing direction to the officer if the interaction is not consistent with the policy and procedures of the police force or these *BC Provincial Policing Standards*;
 - (e) ensuring that any identifying information is removed if either the initial collection or ongoing retention of the record is not justifiable.
- (13) Aggregate data is maintained on the number and type of interactions that resulted in a voluntary request for identifying information, described in Standard (8) above.

Policies and procedures

- (14) Policies and procedures are consistent with these *BC Provincial Policing Standards*, are filed with the Director of Police Services, and are available to the public on the police force's website.

Proposed Policy

1.6 Incident Investigations

1.6.53 Conducting and Documenting Street Checks (and Police Stops)

POLICY

A Street Check is not appropriate when members are operating with lawful authority to detain or arrest. When members are operating without lawful authority to detain or arrest, this policy provides direction to members with regards to the completion of a Street Check.

In the furtherance of their lawful duties, members are expected to interact with the public. Members must nonetheless ensure that those interactions are consistent with the *Canadian Charter of Rights and Freedoms* (sections 7, 9, 10 and 15) and the values that they reflect, including the right to be free from arbitrary arrest and detention; to move freely in society subject only to reasonable restrictions imposed by law; and to equal protection and benefit of the law, without discrimination.

(This addresses the requirement under Standard 1 of BCPPS Police Stops. Similar notations are made throughout this policy to allow the public to easily identify which sections of the policy address a requirement of the Standard).

In British Columbia (BC) and across Canada there has been attention on the police practice of Street Checks. The changes to the practice of Street Checks are part of broader efforts by the BC Police Services to promote unbiased policing. One of those efforts is the issuance of an interim BC Provincial Policing Standard (BCPPS) on Police Stops ([link](#)), which includes the practice of Street Checks.

The procedures about Street Checks, contained herein, provide direction to members that is compliant with the BCPPS on Police Stops; however, it is important to specify that sections 1, 2, 3, and 10 of the procedure provides direction to members when they are conducting a police stop with lawful authority.

Definitions

Street Check: any voluntary interaction between a police officer and a person that is more than a casual conversation and which impedes the person's movement. A Street Check may include a request for identifying information depending on the circumstances.

Psychological Detention: 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.

Identity Factors: 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.

Detention Authorities (Standard 2)

The scope of lawful authorities for police to detain a person, which fall outside of a Street Check and which may permit a request or demand for identifying information from a person include:

Investigative Detention: A brief detention based on a police officer's reasonable suspicion, in all of the circumstances, that a person is connected to a recent and particular crime for which the detention is necessary.

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. 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 Section 496 of the *Criminal Code* provides authority for an arrest.

Statutory Authority: Federal statutes such as the *Criminal Code* as well as certain provincial statutes such as the *Motor Vehicle Act* in the case of driving activity, and certain municipal bylaws, 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.

PROCEDURE

In compliance with the BCPPS, the following provisions shall govern VPD members:

Member Responsibilities

When conducting a Street Check or a police stop where there is lawful authority

1. The decision to conduct a Street Check or a police stop shall not be based on Identity Factors. **(Standard 3)**
2. The decision to conduct a Street Check or a police stop shall not be based solely on that person sharing an Identity Factor with a person being sought by the police. **(Standard 4)**
3. Arbitrary or random Street Checks or police stops, which may or may not include a request for or the collection or recording of a person's identifying information shall not be conducted. **(Standard 5)**

When conducting a Street Check

4. If a detention, arrest, or application of a statutory authority is appropriate, a Street Check should not be conducted.
5. Members must take steps to ensure that the interaction with the person is voluntary, including but not limited to advising the person they are:
 - a. not required to provide any identifying information;
 - b. not required to answer any questions; and
 - c. free to walk away at any time. **(Standard 2(b))**
6. In fulfilling their obligations under 5 (above), members should be mindful of the possibility that the person may feel psychologically detained due to factors such as:
 - a. the circumstances that gave rise to the interaction;
 - b. the nature of the member's conduct; and
 - c. the particular characteristics of the person, including but not limited to:
 - i. Indigenous;
 - ii. homelessness;
 - iii. racialized;
 - iv. age;
 - v. physical stature;
 - vi. minority status; and
 - vii. level of sophistication in the context of the person's ability to understand their rights. **(Standard 2(a))**
7. Where a member concludes that a person is psychologically detained the member should conclude the Street Check and allow the person to proceed. **(Standard 2(a))**
8. Where the member asks the person for identifying information, the member shall inform the person of the public safety purpose or objective for the Street Check. **(Standard 8(a))**
9. After a person's refusal to cooperate with a Street Check, a member may only take subsequent law enforcement action in circumstances where that subsequent law enforcement action is completely unrelated to the initial request made in the Street Check. **(Standard 9)**

Authority to collect identifying information during a police stop with lawful authority:

10. Members are not permitted to request or demand, collect, or record a person's identifying information without a justifiable reason. A member's request or demand for a person's identifying information in relation to a lawful detention, arrest, statutory authority or other existing legal authority is considered a justifiable reason and without limitation, examples are:

- a. as permitted or required by City of Vancouver, municipal, provincial or federal legislation or regulations;
- b. a traffic stop, consistent with statutory and common law;
- c. an arrest;
- d. an attempt to execute a warrant against the person; or
- e. 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. **(Standards 6 and 7)**

Requesting identifying information during a Street Check

11. Members may request that a person voluntarily provide identifying information provided that:

- a. the member reasonably believes the interaction, and any information requested, serves a specific public safety purpose or objective, including:
 - i. assisting in locating a missing person;
 - ii. an objectively reasonable concern for a person's immediate safety;
 - iii. assisting a person in distress to refer them to health, substance use, mental health or other support services; or
 - iv. as part of the response to a call for service;
- b. the member informs the person of the reason or purpose for the interaction; and
- c. 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 and are free to leave. **(Standard 8)**

Documenting a Street Check

12. A Street Check report should not be used to document any incident for which a General Occurrence Report would normally be submitted (PRIME-BC policy section 2.4).

13. When a member conducts a Street Check, for which identifying information was requested, the member shall document the following in a PRIME Street Check report:

- a) the public safety purpose or objective of the Street Check in sufficient detail to articulate the reason for the interaction;
- b) identifying information collected or provided; and
- c) factual information and/or observations from the Street Check.