

# One Minute Brief

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TOPIC: Pat-Down Searches

## **ISSUE:** When may an officer conduct a pat-down search for officer safety?

File this under “back to basics.”

Officers are not allowed to routinely pat down every detained suspect. (*People v. Hubbard* (1970) 9 Cal.App.3d 827, 830.) Instead, when lawfully detaining a suspect, an officer may conduct a limited pat-down search for weapons if he or she has a reasonable suspicion that the suspect is armed and dangerous. (*Terry v. Ohio* (1968) 392 U.S. 1, 30.) This suspicion must be based on specific, articulable facts. (*Id.* at p. 21.)

Because of this, whenever an officer conducts a pat down search in the field, he or she should document **all** the reasons why he or she believed the suspect could be armed. It is not sufficient to note that it was done for “officer safety,” NFD.

Cases have discussed factors relevant to a pat-down for weapons, although many of these are **not sufficient alone** to justify the pat-down:

- Visible bulges that suggest a hidden weapon. (*In re Jeremiah S.* (2019) 41 Cal.App.5th 299, 305.)
- Baggy clothing that suggests a hidden weapon. (*In re Jeremiah S., supra.*)
- Sudden movements or attempts to reach for an object. (*In re Jeremiah S., supra.*)
- Evasive and deceptive responses to an officer’s questions. (*In re Jeremiah S., supra.*)
- Unnatural hand postures that suggest an effort to conceal a weapon. (*In re Jeremiah S., supra.*)
- Making “evasive movements” after being asked to stop. (*People v. Rios* (2011) 193 Cal.App.4th 584, 599.)
- Detention for a crime involving a weapon. If not obvious, officers should explain why an offense likely involved a weapon, based on training and experience. Examples include:
  - Drug trafficking. (*People v. Thurman* (1989) 209 Cal.App.3d 817, 823 [search warrant of drug house]; *People v. Limon* (1993) 17 Cal.App.4th 524, 535 [hand-to-hand exchange].)
  - Armed robbery. (*People v. Anthony* (1970) 7 Cal.App.3d 751, 761.) CAUTION: Not all robberies involve weapons. (*In re Jeremiah S., supra*, 41 Cal.App.5th at p. 307 [pat-down impermissible for robbery with no information about weapons].)

- Burglary, due to likely possession of tools. (*People v. Myles* (1975) 50 Cal.App.3d 423, 430.)
- Auto theft, also due to tools. (*People v. Osborne* (2009) 175 Cal.App.4th 1052, 1061.)
- Number of suspects. (*People v. Samples* (1996) 48 Cal.App.4th 1197, 1211.)
- Suspect's size and aggressive behavior. (*In re Michael S.* (1983) 141 Cal.App.3d 814, 817.)
- Seeing a weapon in another area the subject controlled. (*Michigan v. Long* (1983) 463 U.S. 1032, 1050.)
- "Stygian darkness." (*People v. Foranyic* (1998) 64 Cal.App.4th 186, 190.)
- Being in a "high-crime area." (*People v. Limon* (1993) 17 Cal.App.4th 524, 532.) Note for emphasis: This is *not sufficient by itself* to justify a pat down. (*People v. Medina* (2003) 110 Cal.App.4th 171, 177.)
- The suspect is a "probable gang member." (*People v. Rios, supra*, 193 Cal.App.4th at p. 599.)
- Belligerence. (*People v. Rios, supra*.)
- Officer knows a suspect has previously used a weapon in the past. (*People v. Williams* (1992) 3 Cal.App.4th 1100, 1105.)
- Suspect is on parole (relevant, but requires additional facts to justify pat-down, unless it is a proper parole search). (*People v. Williams, supra*.)

On the other hand, some factors have been ruled to be *irrelevant*:

- Refusing to consent to a search. (*In re H.H.* (2009) 174 Cal.App.4th 653, 659.)
- Appearing nervous. (*People v. Lawler* (1973) 9 Cal.3d 156, 162.)
- Possessing a small amount of "cutting agent" for narcotics. (*People v. Dickey* (1994) 21 Cal.App.4th 952, 956.)

**THE BOTTOM LINE:** Pat-down searches of detained suspects are permissible **only** if the officer has a reasonable belief, based on articulable facts, that the suspect may be armed and dangerous.

**OFFICERS:** If you conduct a pat-down for weapons during a detention, document **all** the reasons why you believed the suspect could have been armed and dangerous.

**PROSECUTORS:** At a suppression hearing, marshal as many facts as you can in support of the pat-down, even if the officer forgot to document them. Ask the officer about his or her training or experience to explain to the court why something was suspicious or why a situation was dangerous. **Know the standard.** Do not simply argue the detention itself was supported by reasonable suspicion.

*This information was current as of publication date. It is not intended as legal advice. It is recommended that readers check for subsequent developments and consult legal advisors to ensure currency after publication. Local policies and procedures regarding application should be observed.*