

		Policy & Procedures			No. 1.06	
		Subject: Stop, Frisk, and Threshold Inquiries				
		Issuing Authority: Chief of Police		Effective Date: 10/23/2009	Review Date: 06/15/2023	
					References:	
Review						
Revision	02/15/2016					
Reissued	11/19/2018					
Dates:	01/12/2020					
	11/17/2020					
	09/12/2022					

CALEA Standards

41.4.1 42.2.0

GENERAL CONSIDERATIONS AND GUIDELINES

A police officer, in appropriate circumstances, may temporarily stop and briefly detain a person for the purpose of inquiring into possible criminal behavior even though the officer does not have probable cause to make a lawful arrest at that time. In addition, *an officer may frisk such person for weapons as a matter of self-protection when he/she reasonably believes that his/her own safety, or that of others nearby, is endangered.* The purpose of this temporary detention for questioning is to enable the police officer to determine whether to make an arrest, whether to investigate further, or whether to take no police action at that time. **41.4.1 B; 42.2.0 (2B)**

The term "investigative detention", as used in this policy, includes what is commonly referred to as a "stop and frisk" as established by the U.S. Supreme Court in *Terry v. Ohio*, and "threshold inquiry" as established in MGL C.41s.98 (police powers). **41.4.1 A; 42.2.0 (2B)**

A search for weapons is permissible where a police officer has reason to believe that he/she is dealing with an armed and potentially dangerous individual, regardless of whether the officer has probable cause to arrest for a crime, and the officer need not be absolutely certain that the individual is armed, but the issue is whether a reasonably prudent person in the same circumstances would be warranted in their belief that their safety, or that of others, was in danger. **41.4.1 G**

Investigatory "stops" by the police are essentially considered to be "forcible" in contrast to "voluntary", and are therefore held to be "seizures" under the Fourth Amendment. The degree of force appropriate to affect a "stop" is dependent upon the articulable facts and circumstances that led up to it.

If an officer fails to adequately affect a "stop" it could result in the escape of a dangerous person or pose a serious threat to the lives and safety of other persons. Conversely, the use, display or threatened use of actual force to carry out an investigatory "stop", when such force was not justified under the circumstances, could result in a finding by the court that an arrest had occurred without the necessary element of probable cause and any evidence obtained as a result might be excluded. Additionally, a civil action could be brought against an officer and the Town for an alleged false arrest or for any alleged damages or injuries incurred by the suspect during the stop.

Although police officers should never hesitate to make an investigatory stop and a necessary frisk for weapons under appropriate circumstances in order to meet the practical needs of effective law enforcement, they should avoid the indiscriminate or unjustified use of this authority.

PROCEDURES

I. MAKING AN INVESTIGATORY STOP 42.2.0 (2B)

- A. It is a basic police duty to check on suspicious persons or circumstances, particularly in the nighttime and/or in a crime-prone area. A brief investigative stop and inquiry is warranted when an officer knows that a crime has been committed, when an officer reasonably believes that a crime is being committed, or when an officer seeks to prevent a crime which he/she reasonably believes is about to be committed.
- B. A police officer has the authority to stop a person for an investigative inquiry in any place where the officer has a lawful right to be. This includes any public place or any place that is open to the public and any private premises entered with a valid warrant, by consent of the occupants, or under certain emergency circumstances.
- C. There is no precise formula for determining the legality of an investigatory stop, but it must be based upon a reasonable and articulable suspicion or belief on the part of the officer that some activity out of the ordinary is taking place, that such activity is crime related, and that the person under suspicion is connected with or involved in that criminal activity.
- D. An investigatory stop does not require probable cause for an arrest. It may be based upon the officer's own observations or information supplied by others. The information on which the officer acts should be well-founded and reasonable. Lastly, a hunch or pure guesswork, or an officer's unsupported intuition is not a sufficient reason for a stop.

E. No single factor alone is normally sufficient, but following are some of the factors which may be considered in determining the reasonableness of an investigative stop by a police officer in the field:

1. The personal observations of the officer and his/her police training and experience
2. The officer's knowledge of criminal activity in the area
3. The time of day or night and the place of observation
4. The general appearance and demeanor of the suspect and any furtive behavior which indicates possible criminal conduct
5. The suspect's proximity to the scene of a recently reported crime
6. Knowledge by the officer of the suspect's prior criminal record or association with known criminals
7. Visible objects in the suspect's possession or obvious bulges in clothing
8. Resemblance of the suspect to a person wanted for a crime
9. Information received from police sources or from other reliable sources of information

F. The fact that the individual has aroused an officer's suspicion should cause the officer to approach with vigilance and to be alert for any possible danger. A routine check of suspicious activity may uncover a serious crime being committed or the presence of a dangerous person who may attempt to flee and/or harm the officer. Conversely, the activity under suspicion may turn out to be innocent and the persons involved maybe law-abiding citizens.

G. No definitive rule can be formulated to determine the period of time required for an investigative stop or detention, but it should be reasonably brief under the particular circumstances. Generally, it should not be longer than is necessary to check a person's identity and the reliability of their story, unless information is obtained that establishes probable cause for an arrest.

If the answers given by the suspect are unsatisfactory because they are false, contradictory or incredible, they may serve as elements in establishing probable cause.

The period of investigatory detention should be sufficiently brief so that the "stop" cannot be construed as an "arrest" which would require probable cause.

II. PAT DOWN FRISKS

- A. *If a police officer reasonably believes that his/her own safety or that of others is in danger from a weapon, he/she may pat-down or frisk the person stopped and may also search the area within that person's immediate control for any weapon that could be used to inflict injury.* It is not necessary that the officer be absolutely certain that such person is armed, but the officer must perceive danger to him/herself or others because of events that led to or occurred during the stop. Officers should be able to articulate this perception if called upon to do so.

41.4.1 B

Additionally, a frisk should not be made as a pretext to search for evidence of a crime, but rather as a protective measure. It must initially be limited to an external pat-down of the suspect's outer clothing. If the suspect is wearing heavy or bulky clothing, these outer garments may be opened to permit a pat-down of the inner clothing. If the officer feels an object which could reasonably be a weapon, a further search may be conducted and the object removed. If no weapon is found, the search should be discontinued.

If while frisking a stopped person, the officer discovers an illegal firearm or weapon, contraband, stolen property, or evidence of a crime and probable cause to arrest develops as a result, an arrest should then be made and a further, more thorough search incidental to that arrest should be made.

- B. When a police officer makes a decision to stop a person for investigative purposes, unless he/she is in uniform, should identify him\herself as a police officer and announce the purpose of the inquiry as soon as it is practical to do so. An investigatory or "threshold" inquiry should begin with exploratory questions regarding the person's identity and purpose. Even in a brief conversation with a suspect, an alert and perceptive officer can often detect or sense that something is wrong and that further police investigation is required.

An officer should always bear in mind that he/she must have a firm foundation for his/her initial suspicions in order to justify an investigative detention and inquiry. The officer must be able to articulate his/her reasons and commit them to writing if required to do so.

III. USE OF FORCE FOR AN INVESTIGATIVE STOP

- A. If the suspected person fails to stop when so directed by a police officer, reasonable force and physical restraint may be necessary depending upon the circumstances.
- B. If the suspected person then flees or attempts to evade the officer, that flight, combined with the observations and information that led to the officer suspecting criminal activity, may give rise to probable cause to arrest.

- C. Reasonable force in such cases is the minimal amount of force needed to overcome the resistance offered, but it does not include the use of firearms or other tactical weapons.
- D. If an officer is attacked, however, sufficient and reasonable force may be used for defense, and to ensure his/her personal safety in accordance with training and department procedure.
- E. The use of handcuffs or other such restraints of NON-ARRESTED persons is allowed only in those circumstances required to ensure self-protection and the protection of others, and must be proportional to the degree of suspicion that caused the stop or intrusion.

The Appeals Court of Massachusetts stated in *COMM. v. PANDOLFINO* (1992) that the "use of handcuffs, if necessary to accomplish permissible inquiry, does not convert a TERRY stop to an arrest" **42.2.0 (2B)** The Court expounded on this further in *COMM. v. ANDREWS* (1993) where they stated that when the police had a legitimate concern for their own safety and their ability to control potentially armed individuals, "the restrictions posed upon the defendants' liberty did not exceed the limits of a permissible TERRY stop". The Court reiterated that "the degree of intrusiveness on a citizen's personal security, including considerations of time, space, and force, must be proportional to the degree of suspicion that prompted the intrusion." The Court further labeled the use of handcuffs in investigative stops as "troublesome". In both cases, the suspects were detained because of their possible involvement in serious felony offenses.

Therefore, in any case where handcuffs or other such restraints are employed on non-arrested persons, they shall be removed as soon as the person is no longer perceived as a danger to the officer or others and/or the weapon has been removed, unless they have been placed under arrest.

In any instance where an officer places handcuffs or other such restraints on a non-arrested person, that officer must submit a report detailing the reasons for his/her actions.

IV. QUESTIONING SUSPECTS

- A. Once a stop is made, any questioning of the suspect should be conducted at that location. Investigative stops are intended to be on-the-spot. To verify the information obtained from the suspect it may be necessary to move to a location where a telephone or radio can be used. Under special circumstances, such as the gathering of an angry or hostile crowd, in heavy traffic, or the necessity to use the police radio, the suspect may be placed in the rear seat of the cruiser.
- B. As part of a threshold inquiry, police may detain a suspect for a short time so that an eyewitness may be brought to the scene to make an in-person identification.

- C. For the purpose of Miranda, if a stopped person is told to move to another location, or if they try to leave but the officer orders them to stay where they are, the person may, at this point, be considered "in custody", although not under arrest. When this happens, the suspect should be read his Miranda warnings and waive them before any further questions are asked. **42.2.0 (2E)**

V. MOTOR VEHICLE STOPS

- A. When an investigative stop involves a motor vehicle, the vehicle may be stopped and its occupants may be briefly detained and questioned by the police if there is a reasonable suspicion of criminal activity based upon specific and articulable facts which justify the need for the action.
- B. Officers must be especially alert when making an investigative stop of a motor vehicle. Officers making such stops should take reasonable protective precautions for their own safety. Officers may, if justification exists, order occupants from a car and frisk them for weapons. If the officers have reason to believe that there still is a possible danger, they should inspect those areas of the vehicle readily accessible to an occupant that may contain a weapon that could be used against them. This protective search of the vehicle must be limited to what is minimally necessary to determine whether the suspect(s) is armed and to remove any weapon discovered. The search must be confined to the area in the vehicle from which the suspect might gain possession of a weapon.
- C. It should be noted that "random" or "pretense" stops of motor vehicles in the absence of reasonable suspicion of moving violations or criminal activity may constitute an unreasonable seizure in violation of the Fourth Amendment and any evidence obtained as a result of the stop would be excluded in court.