

# STOP AND FRISK AND THRESHOLD INQUIRIES

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## I. GENERAL CONSIDERATIONS AND GUIDELINES

A police officer 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. The purpose of this temporary detention for questioning is to enable the police officer to determine whether to make an arrest, investigate further, or to take no police action at that time.

An officer may frisk such a person for weapons as a matter of self-protection when the officer reasonably believes that his/her own safety, or that of others nearby, is endangered. The issue is whether a reasonably prudent person in those circumstances would be warranted in his/her belief that the officer's safety, or that of others, was in danger.<sup>1</sup>

This policy recognizes that police officers are charged with community caretaking functions that do not require judicial justification. These functions are outside of the "law enforcement" function; for example, approaching a vehicle parked in a breakdown lane or checking on motorists in rest areas will not be an investigatory stop.<sup>2</sup>

Police officers should never hesitate to make an investigatory stop and a necessary frisk under appropriate circumstances in order to meet the practical needs of effective law enforcement.

## II. POLICY

It is the policy of this department that:

1. Only when an officer has reasonable suspicion of criminal activity based on specific, articulable facts and reasonable inferences may such officer temporarily stop and detain a person or vehicle; and
2. Once stopped, a suspect may only be frisked for weapons if the officer reasonably believes the person to be armed.

## III. DEFINITIONS

- A. *Investigative Detention:*** As used in this policy, includes what is commonly referred to as "stop & frisk" and also the very similar procedures often referred to as "threshold inquiry."
- B. *Stop & Frisk:*** The warrantless stopping, questioning and frisking of suspicious persons derived from the U.S. Supreme Court case of *Terry v. Ohio*.<sup>3</sup>
- C. *Threshold Inquiry:*** The warrantless stopping, questioning and frisking of suspicious persons based on a Massachusetts statute –c.41, §98.

## IV. PROCEDURE

### A. Stops

1. It is a basic police duty to check on suspicious persons or circumstances, particularly in the nighttime and in crime-prone areas.
2. GROUNDS FOR MAKING A STOP
  - a. An officer may make a brief investigative stop and inquiry if [s]he has a reasonable suspicion of any of the following circumstances:<sup>4</sup>
    - 1) When [s]he knows that a crime has been committed;
    - 2) When [s]he reasonably believes that a crime has been or is being committed; and,
    - 3) When [s]he seeks to prevent a crime which [s]he 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 right to be, including:
    - 1) Any public place;
    - 2) Any place or area open to the public; and,

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- 3) Any private premises entered with a valid warrant, by consent, or under emergency circumstances.
- c. There is no precise formula for determining the legality of an investigatory stop. However, it must be based upon a reasonable belief or suspicion 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; rather, it requires the lesser standard of reasonable belief based on specific, articulable facts and reasonable inferences. 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 basis.
  - e. No single factor alone is normally sufficient. The 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) 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 the day or night and the place of observation;
    - 4) The general appearance and demeanor of the person and any furtive behavior which indicates possible criminal conduct;
    - 5) The person's proximity to the scene of a recently reported crime;
    - 6) Unprovoked flight of an individual upon noticing the police;<sup>5</sup>
    - 7) The knowledge of the person's prior criminal record or of his/her association with known criminals;
    - 8) Visible objects in the person's possession or obvious bulges in his/her clothing;
    - 9) Resemblance of the individual to a person wanted for a known crime; and,
    - 10) Information received from police sources or from other reasonably reliable sources of information.
3. The fact that the individual has aroused the police officer's suspicion should cause the officer to make his/her approach with vigilance and to be alert for any possibility of danger.

- a. A routine police check of suspicious circumstances may uncover the commission of a serious crime or the presence of a dangerous criminal.
  - b. If the stopped person has just committed a major crime, [s]he may be an immediate threat to the officer's safety, or may suddenly attempt to flee from the scene.
4. LENGTH OF STOP: No hard and fast rule can be formulated to determine the period of time required for an investigative detention, but it should be reasonably brief under the particular circumstances.<sup>6</sup>
- a. A stop may only last long enough for the officer to make the threshold inquiry into whether the suspicions were or were not well founded using the least intrusive means possible.
  - b. If the answers given by the suspect are unsatisfactory because they are false, contradictory or incredible, they may serve as elements or factors to establish probable cause.<sup>7</sup>
  - c. The period of investigative detention should be sufficiently brief so that the "stop" cannot be construed as an "arrest," which would require probable cause.<sup>8</sup>

**B. Pat-Down Frisks [1.2.4(b)]**

1. If a police officer reasonably believes that his/her own safety or that of others is in danger, [s]he may frisk or pat-down the person stopped and may also search the area within that person's immediate control in order to discover and take control of any weapon that may be used to inflict injury.<sup>9</sup>
2. It is not necessary that the officer be absolutely certain that such person is armed. However, the officer must perceive danger to himself/herself or others because of events leading to the stop or which occurred after or during the stop.
3. If the officer has a reasonable belief or suspicion, based upon reliable information or personal observation, that a weapon is being carried or concealed in some specific place on the person of the individual, [s]he should immediately check that area before performing a general pat-down.
4. A frisk should not be made a pretext to search for evidence of crime; it must be a protective measure.
5. The frisk must initially be limited to an external pat-down of the suspect's outer clothing. However, if such outer clothing is bulky, such as a heavy overcoat, these garments may be opened to permit a pat-down of inner clothing.

6. When a pat-down is conducted on a member of the opposite sex, officers shall use the preferred method for frisking of a person of the opposite sex (e.g., use the back of the hand or a baton).
7. If the officer feels an object which could reasonably be a weapon, [s]he may conduct a further search for that particular object and remove it.
8. If, after completing a pat-down of the suspect, the officer does not feel any object which could reasonably be a weapon, the search shall be discontinued.
9. If, while frisking a stopped person, the officer discovers an illegal firearm, contraband, stolen property or evidence of a crime, and probable cause to arrest develops, an arrest should be made and a full-scale search incident to that arrest should be made.

### ***C. Use of Force***

1. If the person fails or refuses to stop when so directed by a police officer, reasonable force and physical restraint (including handcuffs) may be necessary, depending upon the circumstances.<sup>10</sup>
2. Actual force may be used to “stop” an individual, as long as the force is both necessary and proportionate to the situation.<sup>11</sup> However, this does not include the discharge of firearms or application of other weapons.
3. If an officer is attacked, sufficient and reasonable force may be used to defend himself/herself and to ensure the officer’s personal safety.

### ***D. Questioning Stopped Persons***

1. When an officer makes a decision to stop a person for investigative purposes, unless the officer is in uniform, [s]he shall identify himself/herself as a police officer as soon as it is safe and practical to do so and also announce the purpose of the inquiry unless such information is obvious.
  - a. An investigatory or threshold inquiry should begin with exploratory questions regarding the person’s identity and his/her purpose.
  - b. Every officer should acquire the ability to initiate an investigative inquiry in a calm, conversational manner in order to gain as much information as possible without placing the suspect on the defensive.
  - c. Even in a brief conversation with an individual, an alert and perceptive officer can often detect or sense that something is wrong and that further police investigation is required.
2. An officer should always bear in mind, however, that [s]he must have a firm foundation for any initial suspicions in order to justify an

investigative detention and inquiry. An officer must be able to articulate and to commit his/her reasons to writing.

3. Once a stop is made, any questioning of the stopped person should be conducted at that location.
  - a. Investigative stops are intended to be on-the-spot inquiries.
  - b. To verify the information obtained from the person, it may be necessary to move a short distance to a radio or telephone.
  - c. Under special circumstances, such as the gathering of a hostile crowd, heavy traffic or the necessity to use the police radio, the person may be placed in the rear seat of a police vehicle.
  - d. As part of a threshold inquiry, the person may be detained for a short time so that an eyewitness may be brought to the scene to make an in-person identification.<sup>12</sup>
  - e. When ordering a person to stop, or if a stopped person is told to move to another location or tries to leave, but the officer orders that person to stay where [s]he is, the person may, at that point, be considered "in custody" (although not under arrest).<sup>13</sup> Once a person is in custody, additional questioning by police must be preceded by giving the Miranda warnings and eliciting a waiver. (See department policy and procedure entitled **1.13 Interrogating Suspects and Arrestees.**)

### ***E. Motor Vehicle Stops***

1. 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 or a motor vehicle violation.<sup>14</sup> All police officers must be especially alert and watchful when making an investigatory stop of a motor vehicle, as many officers have been seriously injured, some fatally, in taking this police action.
  - a. Police cannot randomly stop motorists to check the orderliness of license and registration.
  - b. During the course of the stop, probable cause to search the vehicle may develop – such as through conversation with the occupants or plain view observations.<sup>15</sup>
  - c. An odor of burnt marijuana, absent other evidence, is an insufficient basis to order an occupant to exit a motor vehicle or to search the vehicle without a warrant.<sup>16</sup>
  - d. During a routine traffic stop, police officers may not order the driver or occupant out of the vehicle without a reasonable belief that the officer's safety, or the safety of others, is in danger.<sup>17</sup>

- 1) If the occupant(s) of a vehicle are ordered out of the vehicle, they may be frisked if there is reasonable belief that they may be armed and dangerous and that the police officers or others nearby may be endangered.<sup>18</sup>
- 2) Even after frisking the occupants, if the officers have reason to believe that there is still a possible danger, they should inspect those areas of the motor vehicle readily accessible to an occupant that may contain a dangerous weapon.
  - e. A protective search of the interior of a motor vehicle must be limited to what is minimally necessary to determine whether the suspect is armed and to remove any weapon discovered.<sup>19</sup>
  - f. A protective search for weapons in a motor vehicle must be confined to the area from which the occupant might gain possession of a weapon.<sup>20</sup>
2. While an officer may detain a passenger during a traffic stop, even without particularized reasonable suspicion that the passenger has committed any crime, police officers may not continue the detention of the passenger beyond the completion of the issued citation, without further reasonable suspicion to investigate matters not related to the traffic offense.<sup>21</sup>
3. With the exception of properly conducted sobriety checkpoints, the random stop of a motor vehicle in the absence of reasonable suspicion of motor vehicle violations or criminal activity constitutes an unreasonable seizure in violation of the Fourth Amendment, and any evidence obtained as a result of such impermissible stops is excludable in court.<sup>22</sup>

### **F. Report Writing**

1. In every case of investigative detention (stop and frisk), the police officer involved shall document the circumstances in accordance with departmental procedures to include the identity of the person stopped and all important facts relative to the incident.
2. This is true even in cases where no weapon, contraband or other evidence of crime was discovered or where the person was released after being questioned.

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<sup>1</sup>*Com. v. Matthews*, 355 Mass. 378, 244 N.E.2d 908 (1969).

<sup>2</sup> *Com. v. McDevitt*, 57 Mass. App. Ct. 733 N.E.2d 404 (2003); *Comm. v. Evans*, 436 Mass. 369, 764 N.E.2d 841 (2002).

<sup>3</sup> *Terry v. Ohio*, 392 U.S. 1, 88 S.Ct. 1868 (1968).

<sup>4</sup> *Com. v. Riggieri*, 438 Mass. 613, 782 N.E.2d 497 (2003).

<sup>5</sup> *Illinois v. Wardlow*, 120 S.Ct. 673 (2000).

<sup>6</sup> *U.S. v. Sharpe*, 470 U.S. 675, 105 S.Ct. 1568 (1985); *Com. v. Tossi*, 14 Mass. App. Ct. 901, 442 N.E.2d 419 (1982).

<sup>7</sup> *Com. v. Wilson*, 360 Mass. 557, 276 N.E.2d 283 (1971).

<sup>8</sup> *Com. v. Torres*, 424 Mass. 153, 674 N.E.2d 638 (1997).

<sup>9</sup> See M.G.L. c. 41, §98.

<sup>10</sup> *Com v. Pandolfino*, 33 Mass. App. Ct. 96, 596 N.E.2d 390, *rev. den.* 413 Mass. 1106, 600 N.E.2d 1000 (1992).

<sup>11</sup> *Com. v. Reed*, 23 Mass. App. Ct. 294, 502 N.E.2d 147 (1986); *Com. v. Borges*, 395 Mass. 788, 482 N.E.2d 314 (1985).

<sup>12</sup> *Com. v. Salerno*, 356 Mass. 642, 255 N.E.2d 318 (1970).

<sup>13</sup> *Com. v. Perry*, 62 Mass.App.Ct. 500, 503- 504, 818 N.E.2d 185, 188-189 (2004).

<sup>14</sup> *Delaware v. Prouse*, 440 U.S. 648, 99 S.Ct. 1391 (1979).

<sup>15</sup> *Com. v. Lantigua*, 38 Mass. App. Ct. 526, 649 N.E.2d 1129 (1995); *Com. v. Jimenez*, 22 Mass. App. Ct. 286, 493 N.E.2d 501 (1986).

<sup>16</sup> *Com. v. Benjamin Cruz*, SJC-10738 (April 19, 2011).

<sup>17</sup> *Com. v. Gonsalves*, 429 Mass. 658, 711 N.E.2d 108 (1999) rejecting *Penn. v. Mimms*, 434 U.S. 106, 98 S.Ct. 330 (1977).

<sup>16</sup> *Com. v. Cruz*, SJC-10738 (April 19, 2011).

<sup>17</sup> *Com. v. Gonsalves*, 429 Mass. 658, 711 N.E.2d 108 (1999) rejecting *Penn. v. Mimms*, 434 U.S. 106, 98 S.Ct. 330 (1977).

<sup>18</sup> *Com. v. Hawkes*, 362 Mass. 786, 291 N.E.2d 411 (1973); *Com. v. Lantigua*, 38 Mass. App. Ct. 526, 649 N.E.2d 1129 (1995).

<sup>19</sup> *Com. v. Silva*, 366 Mass. 402, 318 N.E.2d 895 (1974).

<sup>20</sup> *Com. v. Almeida*, 373 Mass. 266, 366 N.E.2d 756 (1977).

<sup>21</sup> *Com. v. Ellsworth*, 41 Mass.App.Ct. 554, 671 N.E.2d 1001 (1996). *United States v. Starks*, 301 F.Supp.2d 76 (D.Mass.2004).

<sup>22</sup>*Delaware v. Prouse*, 440 U.S. 648, 99 S.Ct. 1391 (1979).