

FIELD INTERVIEWS & OBSERVATIONS

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I. GENERAL CONSIDERATIONS AND GUIDELINES

The use of field interviews and field observations are extremely important methods used by the police to effectively prevent or intervene in situations when there is not sufficient grounds for the police to exercise their official powers to stop and detain, or arrest an individual. It is a method that provides something short of an investigatory stop or detention in a manner that respects the rights of individuals, yet allows the police to engage with the public in an unobtrusive way.

It is well established under both federal and Massachusetts constitutional law that an officer may approach an individual and ask that person questions without implicating constitutional rights.¹ The line between a field interview and an investigatory stop, however, is a fine one, and is necessarily fact specific.

For purposes of clarification, a field interview may involve the following activities:

- Approaching an individual for the purpose of striking up a conversation;
- Asking an individual to identify him/herself and their business in the area;
- Noting the individual's physical description, racial background, ethnicity when appropriate, vehicle, location, associates, etc;

¹ *Commonwealth v. Stoute*, 422 Mass. 782, 289 (1996).

- Asking permission to take an individual's photograph; with the understanding that if permission is denied, the officer will not photograph the subject.²

An officer, however, may not employ words or conduct from which a reasonable person would conclude that he/she is not free to leave.³

Should an individual or group of individuals refuse to respond to an officer's efforts in conducting a field interview, absent reasonable suspicion of criminal activity, an officer must not interfere with that individual or group's ability to move about freely. As previously discussed, a field interview is only a tactical approach an officer may take where the facts known to the officer do not permit an officer to lawfully detain a person. Officers should take note of the following legal principles:

- An individual does not have a legal duty to cooperate with police inquiries;
- An individual need not answer the questions posed to him/her. He/she may decline to listen to the questions at all, and go on his/her way;
- Any attempt to detain the individual – even momentarily – without objective means for doing so, is impermissible; and
- The refusal to answer or cooperate, without more, does not furnish the grounds to detain.⁴
- An individual may openly photograph or video record police officers during a field interview. Doing so does not furnish the grounds to detain or arrest the individual.⁵

It is important to understand what distinguishes a field interview from an investigatory stop. Merely applying the label "field interview/observation" to a police-citizen encounter does not make it so. It is extremely fact-specific. For constitutional purposes, an investigatory stop or detention occurs when: "the officer, by means of physical force or show of authority, has in some way restrained the liberty of a citizen."⁶ Put slightly differently, an investigatory stop occurs when a reasonable person would believe that

² This does not restrict an officer from conducting standard photo and video surveillance during an investigation.

³ *Commonwealth v. Thinh Van Cao*, 419 Mass. 383, 388 (1995); *Commonwealth v. Thomas*, 429 Mass. 403, 406-07 (1999); *Commonwealth v. Rock*, 429 Mass. 609, 611 (1999); and *Commonwealth v. Murphy*, 63 Mass. App. Ct. 11 (2005).

⁴ *Florida v. Royer*, 460 U.S. 491, 501 (1983).

⁵ *Glick v. Cunniffe*, 655 F.3d 78 (1st Cir 2011) (noting that the Massachusetts Wiretap Statute only prohibits the covert recording of individuals and finding that police officers violated the plaintiff's constitutional rights by arresting him for openly video recording them on his smart phone) .

⁶ *Terry v. Ohio*, 392 U.S. 1, 19 n.4 (1968).

he/she is not free to leave.⁷ Factors that would tend to suggest an investigatory stop or detention rather than a field interview would include, but are not necessarily limited to, the following:

- Pursuit;⁸
- Any interference with an individual's freedom of movement;
- Show or use of authority, including the presence of a number of uniformed officers;
- Display of a weapon;
- Order to stop;
- Use of blue lights/siren;
- Use of threatening or intimidating tone of voice;
- Requesting and then retaining an individual's driver's license or other form of identification;⁹
- Any physical touching; or
- Any suggestion, either by word or action, of intent to frisk.

On the other hand, factors that would tend to suggest a field interview rather than an investigatory stop or detention would include the following:

- Limited encounter;
- Informing the individual or group of individuals that the encounter is consensual and that they are free to leave;¹⁰
- Questions limited generally to identification and business in the area;
- Asking an individual for a driver's license or other form of identification in a manner not suggesting he or she was compelled to comply;
- Accepting a driver's license or other form of identification that is voluntarily offered by an individual;

⁷ *Commonwealth v. Stoute*, 422 Mass. 782, 789 (1996).

⁸ Pursuit begins only when action by the police would communicate to the reasonable person an attempt to capture or otherwise intrude on an individual's freedom of movement. *Commonwealth v. Sykes*, 449 Mass. 308 (2007). Police officers may follow behind an individual for surveillance purposes without effectuating a stop. *Commonwealth v. Franklin*, 456 Mass. 818 (2010) (noting that the officers' actions did not prompt the defendant's flight and the officers did not exercise any show of authority as they ran behind him, keeping him in their line of sight). However, following behind and closing in on an individual when s/he specifically reverses direction to avoid police interaction is likely to suggest that the individual was not free to leave. *Commonwealth v. Depina*, 456 Mass. 238 (2010) (finding an investigatory stop where three officers emerged from a vehicle, followed behind the defendant, and continued to close in on him even after he reversed direction to avoid them).

⁹ *Commonwealth v. Lyles*, 453 Mass 811 (2009) (finding an investigatory stop where the officer held on to the defendant's identification until arrest).

¹⁰ Given the fact specific nature of street encounters, the Supreme Judicial Court has specifically suggested that the better practice would be for officers conducting field interviews to inform the individuals approached that the encounter is consensual and that they are free to leave at any time. *Commonwealth v. Thinh Van Cao*, 419 Mass. 383, 390 n.9 (1995).

- Promptly returning a driver’s license or other form of identification after review;¹¹
- Congenial or non-threatening tone of voice;
- Limited number of officers;
- No use of blue lights or siren; and/or
- No interference with the individual’s freedom of movement, for example:

Example 1: Uniformed police officer confronts the defendant with this request: “Hey you, I want to speak to you.” At this point, the defendant is not seized because he/she is free to decline the officer’s request. When the uniformed officer then exited his cruiser, and in the presence of two back up cruisers, pointed at the defendant, saying, “Hey you, I wanna talk to you. Come here.” – the defendant was seized. Due to the additional show of authority (exiting vehicle plus the back up cruisers) a reasonable person in these circumstances would not feel free to leave.¹²

Example 2: Police officers followed defendant acting suspiciously into an alley and activated cruiser alley lights, but did not activate blue lights, flashers, or siren, and did not block his course or otherwise control his direction or speed of movement. At this point, without an order to stop, no seizure has occurred. A reasonable person would have believed he was free to leave. Police may follow for surveillance purposes without effectuating a stop.¹³

II. PURPOSE

The purpose of this directive is to provide the guidelines under which officers may conduct field interviews and field observations, as well as to identify the limitations officers must observe in order to avoid a lawful interaction with a citizen from inappropriately escalating to an interaction requiring either reasonable suspicion or probable cause.

III. POLICY

The use of field interviews and field observations are important tactical methods used by officers to effectively prevent, interrupt, detect, or intercept

¹¹ *Commonwealth v. Mathis*, 76 Mass. App. Ct. 366 (2010) (finding that the officers request for, receipt of, and timely return of identification did not amount to an investigatory stop).

¹² *Commonwealth v. Barros*, 49 Mass. App. Ct. 613, 618 (2000).

¹³ *Commonwealth v. Grandison*, 433 Mass. 135, 138 (2001).

individuals who may be contemplating or engaged in criminal activity. This form of police intervention falls short of justifying police officers' ability to stop and detain individuals who have the right to move about freely. Often, any interaction between the police and a citizen may be viewed or perceived by some as a means of police harassment or intimidation conducted in a discriminatory manner against groups or individuals. Police officers' use of these investigative tactics must be respectful of an individual's rights and consistent with the law and judicial standards. Police officers must be able to recognize when they may make inquiries or observations that are not overly intrusive. To this end, this policy is designed to outline the framework and set of procedures under which Everett police officers may conduct field interviews, field observations, and the recording of such actions.

IV. DEFINITIONS

Field Interview: is defined as "an interaction in which a police officer identifies an individual and finds out that person's business for being in a particular area."¹⁴ A field interview is by definition a limited consensual encounter or interaction with an individual that does not escalate into a formal stop and/or frisk, both of which trigger constitutional protections.

Field Observation: A field observation does not involve any actual contact with an individual or group, but simply involves an officer making observations as part of an investigative effort or as a means of gathering sufficient information or intelligence to develop sufficient facts to support further action. It may be a means whereby officers are conducting surveillance for the purpose of gathering information or intelligence as to an individual or group's conduct, associations, vehicle information, and so on.

Investigatory Stop: is defined as the brief detainment of an individual, whether on foot or in a vehicle, based on reasonable suspicion for the purposes of determining the individual's identity and resolving the officer's suspicions of criminal conduct. This is often referred to as a "Terry Stop," an investigative detention, a seizure, or a threshold inquiry.

Reasonable Suspicion: exists when an officer, based on specific and articulable facts, and the rational inferences drawn from those facts, believes that an individual has committed, is committing, or is about to commit a criminal offense. Reasonable suspicion may be based on direct observations or a combination of factors, including, but not limited to, the individual's prior criminal record, furtive conduct or flight from the police, the giving of evasive or conflicting responses to police questioning, admissions or confessions, the nature of the area, and reliable hearsay.

¹⁴ *Commonwealth v. Narcisse*, 457 Mass. 1, 6 n.1 (2010).

Frisk: is defined as the pat down of the outer clothing, and the area within the immediate control of the person (including bags and other personal property) for weapons. An officer may only conduct a frisk when s/he reasonably suspects that the person stopped (1) committed, is committing, or is about to commit a criminal offense, and (2) is armed and dangerous, and thus poses a threat to the officer or others.

Search: is conducted for the specific purpose of seizing evidence. An officer must have probable cause in order to conduct a non-inventory search of an individual or his/her property.

Probable Cause: exists when an officer, based on the facts and circumstances known to him/her and any sufficiently trustworthy information, reasonably believes a person has committed, is committing, or is about to commit a crime. The belief is reasonable when it rests on an objective, substantial basis as contrasted with a mere subjective suspicion. Probable cause may be based on direct observations or a combination of factors, including, but not limited to, the individual's prior criminal record, furtive conduct or flight from the police, the giving of evasive or conflicting responses to police questioning, admissions or confessions, the nature of the area, and reliable hearsay.

Intelligence: consists of stored information on activities, associations of individuals, organizations, business, and/or groups who are either (1) suspected of actual or attempted planning, organizing, financing, or commission of criminal acts, or are (2) suspected of being associated with criminal activity with known or suspected criminals.

V. PROCEDURES

A. Basis for a Field Interview: Street encounters between citizens and police officers are incredibly rich in diversity. They range from wholly friendly exchanges of pleasantries or mutually useful information to hostile confrontations of armed men involving arrest, injuries, or loss of life.¹⁵ Street encounters can be categorized into four general groupings: (1) casual conversation and interaction; (2) field interviews as described above; (3) investigatory stops; and (4) physical arrest. Since a field interview is a consensual interaction, a police officer may initiate such an encounter without any information indicating that an individual has been or is presently engaged in criminal activity.¹⁶ Although no criminal

¹⁵ *Terry v. Ohio*, 392 U.S. 1, 13 (1968).

¹⁶ *Commonwealth v. Narcisse*, 457 Mass. 1, 6 (2010).

predicate is required, an officer should have a legitimate intelligence purpose for initiating a field interview.¹⁷

B. Procedures for Initiating a Field Interview: The following guidelines should be adhered to when conducting a field interview:

1. When approaching an individual or group of individuals, officers should clearly identify him/herself as a police officer, if not in uniform, by announcing his/her identity and displaying departmental identification.
2. Officers should inform the individuals approached that the encounter is consensual and that they are free to leave at any time.
3. Officers should be courteous at all times during the contact, but maintain caution and vigilance for furtive movements to retrieve weapons, conceal or discard contraband, or other suspicious actions.
4. Officers should generally confine their questions to the individual's identity, place of residence, business in the area, and other limited inquiries necessary to resolve any suspicion of criminal activity. However, in no instance should an officer engage an individual longer than is reasonably necessary to make these limited inquiries, unless of course, the facts that become known to the officer warrant an investigatory stop or detention (refer to *PP1.07 – Stop and Frisk and Threshold Inquiries*).
5. Officers are not required to provide an individual with Miranda warnings in order to conduct a field interview. Miranda warnings are required only if the officer's inquiry yields specific facts that (1) elevate the officer's suspicions to probable cause to arrest the subject; or (2) support an attempt to engage in custodial interrogation of the subject.
6. Individuals are not required, nor can they be compelled, to answer any questions posed during a field interview. Failure to respond to an officer's inquiries is not, in and of itself, sufficient grounds to conduct an investigatory stop or make an arrest, although it may provide sufficient justification for additional observation and investigation.

¹⁷ Examples of situations where there is a legitimate intelligence purpose are listed below in Section D, "Reporting Field Interviews/Observations and Investigatory Stops."

C. Procedures for Field Observations: Field observations are much less intrusive than field interviews. Unlike field interviews, field observations are often done without the knowledge of the individuals being observed. This tactic is often useful in gathering additional information about individuals who may be the focus of an ongoing investigation, or as the prelude to taking a more affirmative police action (field interview, investigatory stop, or arrest). Field observations in this context have little value unless the information gathered during these types of encounters is documented and capable of being shared with other officers.

Circumstances where field observations may be useful include, but are not limited to, the following circumstances:

1. Officers may observe persons known to them who may have previously engaged in some form of criminal activity or who may still be under some form of pre- or post-trial supervision.
2. Officers may observe individuals who appear to be engaging in activities or be in places that arouse officers' suspicions. In these instances, an officer may elect to watch a subject prior to approaching him/her to gain a better understanding as to what may be transpiring, and to develop a reasonable factual basis for elevating the officer's interaction with the subject.
3. Officers may observe subjects already under investigation to collect additional information that may further enhance the investigation and share that information with other investigators. This information may include the circumstances of where the subject has been observed; the kinds of activities the subject engaged in; the identity of persons who are noted to be in the company of the subject; the vehicle being driven by the subject; and other relevant information.

D. Reporting Field Interviews /Observations and Investigatory Stops: The information or intelligence that may be obtained as a result of a field interview, field observation, or investigatory stop may have immense importance to an ongoing investigation or may serve as important intelligence relative to future investigations. It may also provide factual and legal justification for elevating initial suspicions to those that would support more intrusive police action. Unless information obtained during field interviews, field observations, and investigatory stops is collected and shared, it is of little value except to the officer making the

observations. Pooling this information potentially benefits the entire department. Toward this end, the department has created a Field Interview / Field Observation/ Investigatory Stop (“FIOS”) report form (see attached form). The following guidelines should be adhered to with regards to FIOS reports:

1. Whenever an officer engages in a field interview or a field observation, the officer should complete a FIOS report (paper form or computer generated form) with as much information as can be gathered during that particular incident. This must include the legitimate intelligence purpose for the field interview or field observation. A legitimate intelligence purpose may include, but is not limited to, instances when an officer observes and/or interviews:
 - An individual known to be associated with a gang or criminal enterprise;
 - An individual that is the subject of an on-going investigation;
 - An individual that is known to the officer to be under some form of pre- or post-trial supervision;
 - An individual in a suspicious neighborhood or location based on his/her known associations;
 - An individual acting suspiciously because of the time of day at which the activity is observed;¹⁸
 - An individual that appears to be engaging in or about to engage in criminal behavior.

¹⁸ *Commonwealth v. Doulette*, 414 Mass. 653, 654-655 (1993) (officer had reasonable suspicion for Terry stop upon seeing car parked in remote area with interior light on and occupant who bent over as if to pick up something); *Commonwealth v. Matthews*, 355 Mass. 378, 381 (1969) (police were justified in stopping pedestrian observed at 2:50 A.M. carrying shopping bag through a residential neighborhood where there had been several incidents of breaking and entering); *Commonwealth v. Patti*, 31 Mass. App. Ct. 440, 443 (1991) (officer had reasonable suspicion to conduct threshold inquiry upon seeing person at 3:15 A.M. standing beside car with hood up and engine running in hotel parking lot where there had been many reported car thefts); *Commonwealth v. Montgomery*, 23 Mass. App. Ct. 909, 910 (1986) (police were justified in stopping car that was cruising slowly at 2:30 A.M. through shopping center where numerous break-ins had occurred).

2. In the event that a field interview escalates in to an investigatory stop, or where an investigatory stop is initially conducted, the officer should provide as much supporting information as can be gathered to establish the reasonable suspicion for the stop. In the event that a pat frisk occurs during an investigatory stop, the officer should also provide as much information as can be gathered substantiating the officer's reasonable belief that the individual was armed and dangerous (refer to *PP1.07 – Stop and Frisk and Threshold Inquiries*).
3. In addition to a detailed account of the encounter or observation, noting the legitimate intelligence purpose, and/or documenting sufficient facts establishing reasonable suspicion, the officer must also record the date, time, and location of the field interview, field observation, or investigatory stop. The officer should also include the race of the individual, and may include ethnicity when appropriate.
4. Should a field interview escalate in to an arrest, the officer should incorporate all of the information obtained during the encounter into the appropriate police investigation report, being sure to attach all personal information and any vehicular information to the appropriate files.
5. All FIOS reports shall be reviewed and approved by a superior officer. The approving officer shall ensure that all FIOS reports meet the standards set forth in this policy, including, but not limited to, the proper and detailed documentation of (1) a legitimate intelligence purpose in the event of a field interview or field observation, (2) reasonable suspicion in the event of an investigatory stop, and (3) officer safety concerns in the event of a pat frisk.
6. All completed and approved FIOS reports should be submitted along with all other police reports, prior to the completion of an officer's shift, to a repository located in the Operations Room where Central Records Personnel will collect them and enter them in to the Records Management System (Crime Track). The hard copies will than be forwarded to the Crime Analysis Unit to be considered for entry in to current or future Regional Intelligence Systems.

E. Homeland Security: Whenever an officer determines that an individual may be engaged in suspicious activity that relates to Homeland Security the officer shall document the determination and the police response related to the activity in an Incident Report. Some examples of such suspicious activity may include, but are not limited to, the following;

1. Persons observed, or reported to have been, taking photographs, making sketches, or taking unusual interest in the details of certain infrastructure such as tunnels, bridges, fuel storage facilities, or similar venues that may be considered high value targets for terrorism activity.
2. Persons who are in possession of, or attempt to gain possession of, uniforms, equipment, or identification that may not be consistent with legitimate needs.
3. Persons in possession of false or altered identification documents.
4. Persons involved in acquiring unusual materials, or inordinate amounts of materials that could be used in the making of dangerous devices.

F. Access to FIOS Reports: The department will provide access to FIOS reports in the Records Management System (Crime Track) for each sworn officer and authorized user.

1. Officers will have the following access permissions:
 - **READ** all reports within the system;
 - **SEARCH** for specific reports within the system; and
 - **PRINT** reports in order to comply with court discovery or to include in investigative files.

G. Dissemination: Officers may access the Records Management System (Crime Track) to print or conduct searches for FIOS reports when there is a legitimate law enforcement purpose for doing so, such as an ongoing investigation or in support of a prosecution. All FIOS reports ordered by the court to be produced, requested by defense counsel, or requested by a member of the public shall be directed to the Keeper of the Records.