

## 1.07 THRESHOLD INQUIRES



# THRESHOLD INQUIRIES

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## I. 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 an arrest. In addition, 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 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 further action at that time.

A search for weapons is permissible where a police officer has reason to believe they are dealing with an armed or dangerous individual, regardless of whether the officer has probable cause to arrest for a crime. The officer need not be absolutely certain that the individual is armed. The issue is whether a reasonably prudent person in the circumstances would be warranted in their belief that the officer's safety, or that of others, was in danger.<sup>1</sup>

Investigatory "stops" by the police may amount to "seizures" and therefore implicate the Fourth Amendment. The degree of force appropriate to enforce a "stop" in a particular case is dependent upon the surrounding facts and circumstances.

Police officers should not hesitate to make an investigatory stop and a frisk if necessary, in order to meet the practical needs of effective law enforcement.

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However, they must avoid the indiscriminate or unjustified use of this authority. Not only do the courts prohibit such police action but it also detracts from the professional image of the police among the citizens of the community in which they serve.

### **II. POLICY**

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. Once stopped, a suspect may only be frisked for weapons if the officer reasonably believes the person to be armed or dangerous.

### **III. DEFINITIONS**

### **IV. PROCEDURES**

#### **REASONS FOR A STOP**

It is a basic police duty to check on suspicious persons or circumstances, particularly in the nighttime and in crime-prone areas. An officer may make a brief investigative stop and inquiry under any of the following circumstances:

1. When they know that a crime has been committed.
2. When they reasonably believe that a crime has been or is being committed.
3. When they seek to prevent a crime which they reasonably believes is about to be committed.

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
3. Any private premises entered with a valid warrant, by consent, or under emergency circumstances.

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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 a crime has been, is being, or is about to be committed, and that the person under suspicion is connected with or involved in that criminal activity.

An investigatory stop does not require probable cause, rather it requires the lesser standard of reasonable suspicion 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.

The following are some of the factors that may be considered in determining the reasonableness of an investigative stop by a police officer in the field. Often, no single factor is sufficient, and the officer must rely on a combination of factors including but not limited to the following:

1. Personal observations of the officer and their 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 that 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>2</sup>
7. The officer's 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;
10. Information received from police sources or from other reasonably reliable sources of information.

The fact that the individual has aroused the police officer's suspicion should cause the officer to make their approach with vigilance and to be alert for any possibility of danger. A routine police check of suspicious circumstances may uncover the commission of a serious crime or the

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presence of a dangerous criminal. If the stopped person has just committed a crime, they may be an immediate threat to the officer's safety, or may suddenly attempt to flee from the scene.

### **LENGTH OF A 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>3</sup>

A stop may only last long enough for the officer to make the threshold inquiry into whether his or her suspicions were or were not justified using the least intrusive means possible. 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>4</sup>

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>5</sup>

### **PAT-DOWN FRISKS [42.2.0(B)]**

If a police officer reasonably believes that their own safety or that of others is in danger, they 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>6</sup>

It is not necessary that the officer be absolutely certain that such a person is armed. However, the officers must perceive danger to themselves or others because of events leading to the stop or which occurred after or during the stop.

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, they should immediately check that area before performing a general pat-down.

A frisk should not be made a pretext to search for evidence of a crime; it must be a protective measure.

The frisk should 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.

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When a pat-down is conducted on a member of the opposite sex, officers should use the back of the hand or a baton if they can do so safely. If the officer feels an object that could reasonably be a weapon, they may conduct a further search for that particular object and remove it. If, after completing a pat-down of the suspect, the officer does not feel any object that could reasonably be a weapon, the pat-down shall be discontinued.

If, while frisking a stopped person, the officer discovers an illegal firearm, contraband, stolen property or any other evidence of a crime and probable cause to arrest develops, an arrest may be made and a full-scale search incident to that arrest should be made.

### **USE OF FORCE**

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>7</sup> Actual force may be used to “stop” an individual, as long as the force is both necessary and proportionate to the situation.<sup>8</sup>

If an officer is attacked, sufficient and reasonable force may be used to defend themselves and to ensure their safety.

### **QUESTIONING STOPPED PERSONS [42.2.0(B)]**

When an officer makes a decision to stop a person for investigative purposes, unless the officer is in uniform, they shall identify themselves as a police officer as soon as it is safe and practical to do so.

An investigatory or threshold inquiry should typically begin with exploratory questions regarding the person’s identity and their purpose. Non-custodial preliminary or investigative questioning need not be preceded by Miranda warnings. 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.

Even in a brief conversation with an individual, an alert and perceptive officer can often detect that something is wrong and that further police investigation is required. An officer should always bear in mind, however, that they must have a firm foundation for their initial suspicions in order to justify an investigative detention and inquiry. They must be able to articulate and to commit their reasons to writing.

Once a stop is made, any questioning of the stopped person should be conducted at that location. Investigative stops are intended to be on-the-spot inquiries, however:

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1. To verify the information obtained from the person it may be necessary to move a short distance to a radio or telephone.
2. 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.
3. As part of a threshold inquiry, the person may be detained for a short time at the scene of the stop or may be transported to the location where the crime was committed, so that an eyewitness may make an in-person identification.<sup>9</sup>

### **MOTOR VEHICLE STOPS**

When an investigative stop involves a motor vehicle, the vehicle may be stopped and its occupants briefly detained and questioned by the police if there is a reasonable suspicion of criminal activity or a motor vehicle violation.<sup>10</sup> All police officers must be especially alert and watchful when making an investigative stop of a motor vehicle as many officers have been seriously injured, some fatally, in taking this police action.

During the course of the stop, probable cause to search the vehicle and/or it's occupants may develop – such as through conversation with the occupants or plain view observations.<sup>11</sup> During a routine traffic stop, police officers may not order the driver or occupant out of the vehicle without a reasonable suspicion.<sup>12</sup>

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>13</sup> After frisking the occupants, if the officer(s) have reason to believe that there is still a danger, they should inspect those areas of the motor vehicle readily accessible to an occupant that may contain a dangerous weapon.

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>14</sup> 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>15</sup>

With the exception of properly conducted sobriety checkpoints, random stops of motor vehicles 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 may be suppressed in court.<sup>16</sup>

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

<sup>2</sup> *Illinois v. Wardlow*, 120 S.Ct. 673 (2000); *Com v. Jeudy*, 75 Mass. App. Ct. 579, 583- 584 (2009)

<sup>3</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>4</sup> *Comm. v. Wilson*, 360 Mass. 557, 276 N.E.2d 283 (1971)

<sup>5</sup> *Comm. v. Torres*, 424 Mass. 153, 674 N.E.2d 638 (1997)

<sup>6</sup> See *M.G.L. c. 41, s. 98*

<sup>7</sup> *Comm v. Pandolfino*, 33 Mass. App. Ct. 96, 596 N.E.2d 390, rev. den. 413 Mass. 1106, 600 N.E.2d 1000 (1992)

<sup>8</sup> *Comm. 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>9</sup> *Comm. v. Salerno*, 356 Mass. 642, 255 N.E.2d 318 (1970)

<sup>10</sup> *Delaware v. Prouse*, 440 U.S. 648, 99 S.Ct. 1391 (1979)

<sup>11</sup> *Comm. 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>12</sup> *Comm. 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>13</sup> *Comm. 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>14</sup> *Comm. v. Silva*, 366 Mass. 402, 318 N.E.2d 895 (1974)

<sup>15</sup> *Comm. v. Almeida*, 373 Mass. 266, 366 N.E.2d 756 (1977)

<sup>16</sup> *Delaware v. Prouse*, 440 U.S. 648, 99 S.Ct. 1391 (1979)