



BRAINTREE POLICE DEPARTMENT

Policy and Procedure

THRESHOLD INQUIRIES

2018-27

Date of Issue: 06/20/2018

Issuing Authority:

Review Date:

Chief Mark Dubois

Revised:

Certification Standards: **1.2.3, 1.2.4b**

Accreditation Standards:

Optional Accreditation Standards:

POLICY

When an officer has ***reasonable suspicion*** of criminal activity based on ***specific articulable facts and reasonable inferences*** the officer may temporarily stop and detain a person or vehicle. Once stopped, a suspect may be ***frisked for weapons*** if the officer ***reasonably believes the person to be unlawfully armed or armed and dangerous.***

PROCEDURES

I. 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*.¹ [1.2.3]
- C. **Threshold Inquiry:** The warrantless stopping, questioning and frisking of suspicious persons based upon M.G.L. c. 41 § 98.

¹ *Terry v. Ohio*, 392 U.S. 1, 88 S.Ct. 1868 (1968).

II. STOPS

A. It is a basic police duty to check on suspicious persons or circumstances.

B. GROUNDINGS FOR MAKING A STOP [1.2.3]

1. An officer may make a brief investigative stop and inquiry when that officer reasonably believes that a crime has been committed, is being committed, or is about to be committed.
2. 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:
 - a. Any public place;
 - b. Any place or area open to the public; and
 - c. Any private premises where the officer is lawfully present (i.e with a valid warrant, by consent, or under emergency circumstances).
3. There is no precise formula for determining the legality of an investigatory stop. However, investigatory stops must be based on a reasonable belief or suspicion that some type of criminal activity is occurring and the person(s) or vehicle(s) stopped are connected with that criminal activity.
4. 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.
5. 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:
 - a. Personal observations of the officer and his/her police training and experience;
 - b. The officer's knowledge of criminal activity in the area;
 - c. The time of the day or night and the place of observation;
 - d. The general appearance and demeanor of the person and any furtive behavior which indicates possible criminal conduct;
 - e. The person's proximity to the scene of a recently reported crime;
 - f. Unprovoked flight of an individual upon noticing the police;²
 - g. The knowledge of the person's prior criminal record or of his/her association with known criminals;
 - h. Visible objects in the person's possession or obvious bulges in his/her clothing;
 - i. Resemblance of the individual to a person wanted for a known crime;
 - j. Information received from police sources or from other reasonably reliable sources of information.

² *Illinois v. Wardlow*, 120 S.Ct. 673 (2000).

- C. **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.³
1. A stop may last only as long as it takes for the officer to confirm or dispel his/her suspicions using the **least intrusive means** possible.
 2. False, contradictory, or incredible answers given by a suspect may serve as elements or factors to establish probable cause.⁴
 3. The period of investigative detention should be sufficiently brief so that the "stop" cannot be construed as an "arrest," which would require probable cause.⁵

III. PAT-DOWN FRISKS [1.2.4b]

- A. 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.⁶ [1.2.4b]
- B. It is not necessary that the officer be absolutely certain that such person is armed; however, the officer must reasonably perceive danger to himself/herself or others.
- C. If the officer has a reasonable belief or suspicion 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. [1.2.4b]
- D. A frisk is a protective measure and should not be made a pretext to search for evidence of crime.
- E. 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.

Note: Police must properly pat frisk a defendant before lifting his clothing to reveal a weapon is present.⁷

³ *U.S. v. Sharpe*, 470 U.S. 675, 105 S.Ct. 1568 (1985); *Commonwealth v. Tossi*, 14 Mass. App. Ct. 901, 442 N.E.2d 419 (1982).

⁴ *Commonwealth v. Wilson*, 360 Mass. 557, 276 N.E.2d 283 (1971).

⁵ *Commonwealth v. Torres*, 424 Mass. 153, 674 N.E.2d 638 (1997).

⁶ See G.L. c. 41, section 98.

⁷ *Commonwealth v. Flemming*, 76 Mass. App. Ct. 632 (2010).

- F. 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).
- G. 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.
- H. If, after completing a pat-down of the suspect, the officer does **not** feel any object which could reasonably be a weapon no further search shall be conducted.
- I. Probable cause to arrest or conduct a search incident to arrest may arise if while frisking a stopped person the officer discovers an illegal firearm, contraband, stolen property or evidence of a crime.

IV. USE OF FORCE

- A. 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.⁸
- B. Any actual force used to “stop” an individual must be both **necessary and proportionate** to the situation.

V. QUESTIONING STOPPED PERSONS [1.2.3]

- A. 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 practical. Officers should also announce the purpose of their inquiry unless doing so will impede the investigation or the purpose is obvious.
 - 1. An investigatory or threshold inquiry should begin with exploratory questions regarding the person’s identity and his/her purpose.
 - 2. Officers should initiate investigative inquiries in a calm conversational manner in order to gain as much information as possible without placing the suspect on the defensive.
- B. Once a stop is made, any questioning of the stopped person should be conducted at that location.
 - 1. Investigative stops are intended to be on-the-spot inquiries.
 - 2. To verify the information obtained from the person it may be necessary to move a short distance to a radio or telephone.

⁸ *Commonwealth v. Pandolfino*, 33 Mass. App. Ct. 96, 596 N.E.2d 390, *rev. den.* 413 Mass. 1106, 600 N.E.2d 1000 (1992).

3. Under certain circumstances, the person may be placed in the rear seat of a police vehicle (i.e., the gathering of a hostile crowd, heavy traffic or the necessity to use the police radio).
4. 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.⁹
5. If a stopped person is told to move to another location or tries to leave, but the officer orders him/her to stay where [s]he is, the person may, at that point, be considered "in custody" (although not under arrest). Once a person is in custody, additional questioning by police must be preceded by giving the Miranda warnings and eliciting a waiver.

VI. 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 or a motor vehicle violation.¹⁰
 1. Police cannot randomly stop motorists to check the orderliness of license and registration.
 2. 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.¹¹
 3. 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.**¹²
 - a. 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 unlawfully armed or armed and dangerous** and that the police officers or others nearby may be endangered.¹³ **[1.2.4b]**
 - b. Even after frisking the occupants, officers should inspect those areas of the motor vehicle readily accessible to an occupant that may contain a dangerous weapon.

⁹ *Commonwealth v. Salerno*, 356 Mass. 642, 255 N.E.2d 318 (1970).

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

¹¹ *Commonwealth v. Lantigua*, 38 Mass. App. Ct. 526, 649 N.E.2d 1129 (1995); *Commonwealth v. Jimenez*, 22 Mass. App. Ct. 286, 493 N.E.2d 501 (1986).

¹² *Commonwealth v. Gonsalves*, 429 Mass. 658, 711 N.E.2d 108 (1999) rejecting *Pennsylvania v. Mimms*, 434 U.S. 106, 98 S.Ct. 330 (1977).

¹³ *Commonwealth v. Hawkes*, 362 Mass. 786, 291 N.E.2d 411 (1973); *Commonwealth v. Lantigua*, 38 Mass. App. Ct. 526, 649 N.E.2d 1129 (1995).

4. 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.¹⁴
 5. 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.¹⁵
- B. 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 are excludable in court.¹⁶

VII. REPORT WRITING

In every case of investigative detention (stop and frisk) a computer entry shall be made documenting the following:

1. The officer(s) involved and the location of the stop;
2. Reason(s) for the stop;
3. The identity of the person(s) or vehicle(s) stopped;
4. Any other important facts relative to the incident.

¹⁴ *Commonwealth v. Silva*, 366 Mass. 402, 318 N.E.2d 895 (1974).

¹⁵ *Commonwealth v. Almeida*, 373 Mass. 266, 366 N.E.2d 756 (1977).

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