



INVESTIGATORY STOP AND FRISK AND THRESHOLD INQUIRY

General Order Number: 24.1

Effective Date: July 9, 2024

POLICY:

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. In addition, an officer may frisk such a person for weapons as a matter of self-protection when the officer reasonably believes that the officer's 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, further investigate, or take no police action at that time.

The term "investigatory detention," also referred to as a "threshold inquiry," was previously referred to as "stop and frisk". The term "stop and frisk" is derived from the landmark case of *Terry v. Ohio* (*Terry v. Ohio*, 392 U.S. 1, 88 S.Ct. [1968]) in which the United States Supreme Court recognized the authority of police to engage in warrantless stopping, questioning, and frisking of suspicious persons. The court ruled that such stops are reasonable, and therefore do not violate the Fourth Amendment to the United States Constitution, when there is reasonable suspicion of crime. Massachusetts law also describes the circumstances under which a "stop" or a "frisk" is permissible.¹

Investigatory "stops" by the police are 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 enforce a "stop" in a particular case is dependent upon the surrounding facts and circumstances.

An investigatory stop should be brief and last only until it has achieved its objective, which is to determine criminal activity of a subject. The longer the stop lasts the more likely it is a court will view the suspect as "in custody".

Although 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, they should avoid the indiscriminate or unjustified use of this authority. Such police action is not only frowned upon by the courts, but it also detracts from the professional image of the police among the citizens of the community in which they serve.

¹ Mass. Gen. Law, Chap. 41, Sec. 98.

PROCEDURES:

I. GROUNDS FOR MAKING A STOP:

- A. It is a basic police duty to check on suspicious persons or circumstances, particularly in the nighttime.
 - 1. A brief investigatory stop and inquiry is warranted under the following circumstances:
 - a) When a police officer knows that a crime has been committed;
 - b) When a police officer reasonably believes that a crime has been or is being committed; and
 - c) When a police officer seeks to prevent a crime, which the officer reasonably believes is about to be committed.
 - 2. A police officer has the authority to stop a person for an investigatory 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;
 - c) Any private premises entered with valid warrant, by consent, or under emergency circumstances.
- B. There is no precise formula for determining the legality of an investigatory stop, but 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.
- C. An investigatory stop does not require probable cause for 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 basis. Due caution and concern should be exercised to ensure that possible biases of a reporter are not amplified by the behavior of police. A person subjected to even a brief stop may experience the interaction as hostile, especially if the person experiences such interactions repeatedly.
- D. If the information provided to the police is based upon an anonymous caller, the police must satisfy a two-prong test. The police need to establish the anonymous caller's (1) reliability and (2) basis of knowledge. An anonymous caller's basis of knowledge may be satisfied by obtaining information on how the anonymous tipster knows the information that is being provided (e.g., the anonymous tipster is witnessing the reported crime). The reliability prong may be satisfied when the

responding officers are able to corroborate the anonymous caller's information (e.g., confirm description of clothing or vehicle as provided by anonymous tipster).

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

1. The personal observations of the officer and the officer's 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—however, where a suspect is under no obligation to respond to a police officer's inquiry, flight alone will generally not be sufficient to establish reasonable suspicion;²
5. The suspect's proximity to the scene of recently reported crime;
6. The knowledge 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 known crime;
9. Information received from police sources or from other reasonably reliable sources of information.

F. The fact that the individual has aroused the police officer's suspicion should cause the officer to approach with vigilance and to be alert for any possibility of danger.

1. A routine police check of suspicious circumstances may uncover the commission of a serious crime or the presence of a dangerous criminal.
2. If the stopped suspect has just committed a major crime, the suspect may be an immediate threat to the officer's safety or may suddenly attempt to flee from the scene.

G. No hard and fast rule can be formulated to determine the period of time required for an investigatory detention, but it should be reasonably brief under the particular circumstances.

1. Generally, it should be no longer than the period of time necessary to check the suspect's identity and the reliability of the information the suspect

² Commonwealth v. Warren, 475 Mass. 530 (2016).

provides, unless information is obtained which establishes probable cause to make an arrest.

- 2.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.³
- 3.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 the officer’s own safety or that of others is in danger, the officer may frisk or pat-down the person stopped and the officer 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.
- B. It is not necessary that the officer be absolutely certain that such person is armed, but they must perceive danger to themselves or others because of events leading to the stop or which occurred after or during the stop.
- C. If the officer has 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 suspect, they should immediately check that area before performing a general pat down.
- D. A frisk should not be a pretext to search for evidence of a crime; it must be of a protective nature.
- E. The frisk must initially be limited to an external pat down of the suspect's outer clothing, but if such outer clothing is bulky, such as a heavy overcoat, these garments may be opened to permit a pat down of inner clothing.
- F. If the officer feels an object, which could reasonably be a weapon, they may conduct a further search for that particular object and remove it.
- G. If, after completing their pat down of the suspect, the officer does not feel any object, which could reasonably be a weapon, they should discontinue their search.
- H. 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 mad

³ Commonwealth v. Wilson, 360 Mass. 557, 276 N.E. 2d 283 (1971).

III. PROCEDURES FOR INITIATING A STOP

- A. Although not every conversation rises to the level of an an investigatory stop, when a police officer does make a decision to stop a person for an investigatory purpose:
 - 1. Unless the officer is in uniform, they should identify themselves as a police officer as soon as it is safe and practical to do so and also announce the purpose of their inquiry unless such information is obvious.
 - 2. An investigatory or threshold inquiry should begin with exploratory questions regarding the suspect's identity and purpose.
 - 3. Every officer should acquire the ability to initiate an investigatory inquiry in a calm, conversational manner in order to gain as much information as possible without placing the suspect on the defensive.
 - 4. 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.
 - 5. An officer should always bear in mind, however, that the officer must have a firm foundation for initial suspicion to justify an investigatory detention or inquiry. The officer must be able to articulate and commit the reasons to writing.

IV. USE OF FORCE:

- A. If the suspected person fails or refuses to stop when so directed by a police officer, a reasonable response and proportionate physical restraint may be necessary depending upon the circumstances. The Department policy on Use of Force ([General Order 30.3](#)) should be consulted.
- B. When combined with the observations and information which led the officer to reasonably suspect criminal activity may be afoot, if the suspect runs or tries to evade the officer, that additional factor may give rise to probable cause to place the suspect “in custody.”⁴

V. QUESTIONING SUSPECTS:

- A. Once a stop is made, any questioning of the suspect without Miranda warning should be conducted at the location of the stop and limited in scope and time. The purpose of the questioning is intended to verify or dispel the reasonable suspicion of criminal activity held by the officer.
- B. A suspect may be moved a short distance to verify the information obtained from the suspect or for general safety. Under special circumstances, such as the

⁴ Commonwealth v. Ling, 370 Mass. 238, 346 N.E. 2d 703 (1976).

gathering of a hostile crowd, heavy traffic, or the necessity to use the police radio, the suspect may be placed in the rear seat of a police vehicle.

- C. 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.⁵ Officers may also bring a suspect back to the scene for a one on one identification.⁶ “One on one confrontations conducted promptly after the commission of a crime are not violative of due process rights despite the absence of exigent circumstances.”⁷
- D. If a stopped person is told to move to another location or if the stopped person tries to leave but the officer orders the person to stay where they are, 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 of the right to self incrimination.

VI. WHEN AN INVESTIGATORY STOP TURNS INTO A CUSTODIAL STOP

- A. A person subject to an investigatory stop is not considered to be “in custody.” There are four factors to determine if the police officer puts a suspect “in custody” to require Miranda warnings:
 - 1.The place of the questioning,
 - 2.Whether the officer conveys to the suspect the officer's belief or opinion that the person being questioned is a suspect in a crime,
 - 3.The way the officer asks questions, whether aggressive or informal, and
 - 4.Ability of the suspect to end the questioning by leaving the location of the interview or by asking the officer to leave.
- B. If the officer creates a coercive environment for the questioning, the investigatory questioning will be considered to be custodial, requiring the officer to provide Miranda warnings to the suspect.
- C. Statements may also be considered to be involuntary in light of the totality of the circumstances of the stop, the characteristics of the suspect and the officer's questioning, again requiring the officer to provide Miranda warnings

VII. MOTOR VEHICLE STOPS:

- A. When an investigatory 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

⁵ Commonwealth v. Salerno, 356 Mass. 238642, 346 N.E. 2d 318 (1970), Commonwealth v. Pandolfino, 33 Mass. App. Ct. 96 (1992), and Commonwealth v. Andrews, 34 Mass. App. Ct. 324 (1993).

⁶ Commonwealth v. Crowley, 29, Mass. App. Ct. 1 (1990).

⁷ Commonwealth v. Leonardi, 413 Mass. 757 (1992).

reasonable suspicion of criminal activity based upon specific and articulable facts, which justify the need for immediate police action.

- B. 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. See Motor Vehicle Pursuit policy ([General Order 35.2](#)) in the event an investigatory stop becomes an attempt to flee.
- C. Police officers, in making such stops, should take reasonable protective precautions for their own safety, such as directing the occupants to alight from the vehicle and frisking them for weapons only when justification for such frisks exists. Massachusetts law does not automatically authorize police to order a driver or other occupants out of a vehicle wherever a vehicle is stopped, but rather requires that a police officer have a reasonable concern for safety based on articulable facts, or reasonable suspicion regarding each occupant directed to exit. Federal law grants police broader authority in this area, but Brookline police share that broader authority only when serving in a federal task force or similar capacity authorized by federal law.⁸
- D. Even after frisking the occupants, if the officers have reason to believe that there is still a danger, they may 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 search only areas or containers where the suspect may get a weapon and then remove any weapon discovered.⁹
- E. It should be noted that “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 is excludable in court.¹⁰

VIII. REPORT WRITING:

- A. In every case of investigatory stop (questioning, and/or frisk), the police officer involved shall make a computerized F.I. entry at a minimum, and/or a report if warranted by circumstances to include the identity of the person stopped and all important facts relative to the incident, even in cases where no weapon, contraband, or other evidence of crime was discovered or where the person was released after being questioned.

⁸ Commonwealth v. Gonsalves, 429 Mass. 658 (1999) as opposed to Pennsylvania v. Mimms, 434 U.S. 106, 98 S.Ct. 330 (1977). See also Commonwealth v. Bostock, 450 Mass. 616 (2008); Commonwealth v. Torres, 424 Mass. 153 (1997).

⁹ Commonwealth v. Silva, 366 Mass. 402, 318 N.E. 2d 895 (1974) (non-investigatory search underneath the seat was excessive in scope); Commonwealth v. Almeida, 373 Mass. 266 366 N.E. 2d 756 (1977) (investigatory search underneath the car seat was justified and reasonable).

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

- B. Officers shall be specific when completing a report or making an F.I. entry into the system:
1. The officer shall specify the type of crime suspected if the officer detains, or interrogates a person suspected of a crime.
 2. Whenever an officer completes a report or F.I. entry, the officer shall also identify the reason for the original stop (i.e. radio call, citizen assist, investigatory, criminal or motor vehicle law violation or other) and, in the narrative, the original caller-provided description of the subject, if one was provided and relevant.
 3. The officer shall be specific with regard to the race of the individual in accord with department practice.
 4. Officers must enter a race, even when it is based solely on the officer's perception, and shall not use any race designation other than those provided.
- C. Whenever an officer stops a motor vehicle for a motor vehicle law violation or other inquiry the officer shall issue a citation and/or document the stop with a report or entry in the F.I. system or with a motor vehicle contact form if no citation is issued.