



GENERAL ORDER

Loudoun County Sheriff's Office

Chapter: Operations

Section: 402.4

Subject: Arrest

Topic: Stop and Frisk and De-arrest Guidelines

Enacted: 07/30/2015

Last Review:
07/24/2015

Review: 01/30/2016

I. PURPOSE

The purpose of this General Order is to establish policies and procedures for the detention of suspicious persons and to define the necessary elements for a search that extends beyond the person to the passenger compartment of a motor vehicle during the lawful investigatory stop of the occupant of a vehicle. Guidelines are also specified for termination of an arrest when circumstances dictate that a continuation of the arrest process would be improper, or illegal.

II. POLICY

It is the policy of the Loudoun County Sheriff's Office to comply with the Code of Virginia, Federal statutes and county ordinances when detaining, stopping, searching, frisking, etc. persons and property.

III. DEFINITIONS

Stop and Frisk - Temporary detention of a subject when the deputy has reasonable suspicion that criminal activity has occurred, is occurring, or is about to occur. Frisk entails the "pat down" type search of a subject when the deputy suspects the subject may be carrying a weapon and the deputy is in fear for his own safety.

Reasonable Suspicion - Defined by the courts as a standard involving less than probable cause to arrest; a circumstance or collection of circumstances that lead a trained and experienced law enforcement officer to believe that criminal activity may be afoot.

Probable Cause - Facts and circumstances such as to cause a person of reasonable caution to believe that an offense is being or has been committed and that the person to be arrested has committed the offense.

IV. STOP AND FRISK

Under the provisions of the Code of Virginia, a law enforcement officer may temporarily detain a person in a public place if reasonable suspicion exists that a felony has been committed, is being committed, or is about to be committed; or the deputy reasonably suspects that a person is illegally carrying a concealed weapon in violation of Section 18.2-308 of the Code of Virginia.

A temporary detention as recognized by the United States Supreme Court in Terry v. Ohio, 392 U.S. 1 (1968), is a seizure as controlled by the Fourth Amendment. The court recognized that law enforcement officers must be able to take action even when probable cause to arrest does not

exist. The Virginia Supreme Court supported the necessity of stops and frisk in a 1977 case, Simmons v. Commonwealth, 217 Va. 552, 231 S.E. 2d, 218, when it stated:

“The Fourth Amendment does not require a policeman who lacks the precise level of information necessary for probable cause to arrest to simply shrug his shoulders and allow a crime to occur or a criminal to escape. On the contrary, Terry recognizes that it may be the essence of good police work to adopt an intermediate response. A brief stop of a suspicious individual in order to determine his identity or to maintain the status quo momentarily while obtaining more information may be most reasonable in light of the facts.”

Within stop and frisk, two distinct acts exist: (1) the stop and (2) the frisk of the person(s) stopped. Each is presented individually:

- A. Stop - The detention of a subject for a brief period of time. In order to make the stop, the deputy must have reasonable suspicion to believe that criminal activity is afoot and that the individual to be stopped is involved. The courts have ruled that the following factors may be considered in building a foundation for reasonable suspicion:
1. Deputy has valid knowledge that a person has a prior felony record
 2. A person fits the description of a wanted notice
 3. A person has exhibited furtive conduct, such as fleeing from the presence of a deputy or attempting to conceal an object from the deputy's view
 4. Clothing worn by a person is similar to description given in a lookout for a known offense
 5. A vehicle is observed that is similar to a broadcast description for a known offense
 6. A person exhibits unusual behavior, such as staggering or appearing to be in need of medical attention
 7. The area and time of day, such as a person observed in a public area that has a history of recurring crime during the same time period as the time of the temporary detention
 8. Hearsay information is acceptable. In order for the information to be credible, the deputy must have some means to gauge the reliability of the informant's knowledge
- B. Frisk - Should the deputy reasonably believe that the person stopped intends to do him bodily harm or is carrying a concealed weapon, the deputy may conduct a limited search of the person's outer clothing. The courts have held that, in the case where the subject was wearing a heavy overcoat, the deputy was proper in having the subject remove the coat so that he may be patted down.

- C. Search Beyond The Person - The United States Supreme Court held in Michigan v. Long, 463 U.S. 1032 (1983) that although Terry v. Ohio involved the stop and subsequent pat down search for weapons of a person suspected of criminal activity, it did not restrict the protective search to the person of the detained suspect. The Court recognized that protection of police and others can justify protective searches when there exists a reasonable belief that the suspect poses a danger. Thus, the search of a passenger compartment of an automobile limited to those areas in which a weapon may be placed or hidden, is permissible. A lawful protective search for weapons that extends to an area beyond the person in the absence of probable cause to arrest must have all of the following elements present:

1. A lawful investigative stop or lawful vehicle stop.
2. A reasonable belief that the suspect poses a danger. As defined by the court in Michigan v. Long, reasonable belief is based on: "specific and articulable facts, which taken together with the rational inferences from those facts, reasonably warrant the deputy to believe that the suspect is dangerous and the suspect may gain immediate control of weapons."
3. The search must be limited to those areas in which a weapon may be placed or hidden.
4. The search must be limited to an area that would ensure that there are no weapons within the subject's immediate grasp.

The Court added in Michigan v. Long that, although the subject was under the control of two officers during the investigative stop, it did not render unreasonable a belief that he could injure them.

- D. Period of Detention - Courts have generally held that the period of detention is a brief intrusion upon a person's movement. Once the detaining deputy determines that his/her basis for reasonable suspicion no longer exists, the person detained should be immediately released. Should the suspicion be reinforced with additional information or the deputy develops probable cause, the period of detention could be lengthened. Legal decisions have construed a period of 20 minutes to be too long to reasonably detain a subject absent probable cause.

The deputy is required to quickly evaluate the circumstances present and determine whether probable cause exists to arrest. If not, the subject should be released from detention. The detention of a subject should be as brief as possible and terminated immediately upon deciding that probable cause does not exist. It is incumbent upon the deputy to be able to articulate the circumstances that aroused his/her suspicions leading to the detention. Upon termination of the detention, the deputy should document the circumstances in the field notebook to serve as a reminder for possible future questioning of the detention. Should an arrest result from the detention, the deputy should document in the IBR the circumstances of suspicious actions that led to the initial detention.

V. DE-ARRESTA. Legal Background

In some instances, deputies may encounter a circumstance where probable cause develops to arrest an individual for an offense only to find out shortly thereafter that the person under arrest did not commit a crime, or that further investigation reveals the event does not constitute a crime. It is imperative then that the deputy terminates the arrest process immediately to avoid potential liability for false imprisonment. False imprisonment, as defined in Montgomery Ward v. Freeman, 199 F 2d 720 (1953), "is the restraint of one's liberty without any sufficient legal excuse."

The Attorney General of Virginia has issued an opinion, 1970-1971 Op. Atty. Gen. Va. 102, which states the following:

Although 19.1-100.1 (*now Section 19.2-82*) was enacted only in 1968, its antecedents in the Code of Virginia predate the case of Mallory v. United States, 354 U.S. 449 (1957). (See *Code of 1942, Section 4827 (a)*. Cases interpreting this section have held that the word "forthwith" is to be construed literally, providing the same effect at the Mallory rule.) Winston v. Commonwealth, 188 Va. 386 (1948); McHone v. Commonwealth, 190 Va. 435 (1950).

These cases, as well as more recent cases, such as Holt v. City of Richmond 204 Va. 364 (1963), arise out of the context where a formal charge is sought to be sustained after the 'forthwith' rule has not been complied with. It is my opinion, however, that the Legislature did not intend for this rule to operate where no formal charge is to be placed, since the purpose of the rule is to protect an arrestee from being held incommunicado by the police without formal charge or access to bail. If no formal charge is ultimately placed, there would be no occasion for the rule to be invoked against the Commonwealth. This does not mean, of course, that the police officer may 'hold for investigation' a person for an unduly long time and then release him, since this might create an action for false imprisonment by the detainee. It is my opinion, therefore, that an arresting officer, who may have had probable cause to initially make the arrest without a warrant, may thereafter conclude that further prosecution of the arrestee would be improper or fruitless and may, subsequently, discharge him from custody without the necessity of taking him before a magistrate.

As stated by the Attorney General, a deputy is required to formally charge only those persons who have been placed under arrest, if the deputy concludes that further prosecution would be proper and fruitful.