

14 things cops need to know to successfully use 'stop and frisk'

The stop and frisk tool for law enforcement has been particularly useful in addressing violent crime problems of a recurring nature and protecting officer safety

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In 1968, the United States Supreme Court astutely recognized that law enforcement officers across our great nation needed a proactive lawful investigative tool to combat prospective criminal activity before it occurred. In *Terry v. Ohio*^[1] a police officer observed two male suspects acting suspiciously. The officer, who had years of experience as a police officer, suspected that they were “casing” a store for a holdup. ^[2]

The officer approached them, grabbed one suspect and spun him around. He patted the man’s outer clothing for weapons and discovered a handgun.

The Supreme Court ruled that the man was subjected to a “seizure” of his person — an investigative detention/not an arrest — but the seizure was justified because the officer had developed facts amounting to a reasonable suspicion that criminal activity was taking place. The Court also ruled that the “pat down” frisk for weapons was justified because the officer had a reasonable fear for personal safety based upon his observations that suggested they were planning an armed robbery.

PROACTIVE POLICING

In reaching its decision, the Court observed that law enforcement officers were constitutionally permitted to arrest law breakers after a crime had occurred as long as they had probable cause to justify the arrest. However, the Court believed that officers, in order to enhance public safety, were in need of something more — the ability to stop, detain and question persons they suspected of criminal activity before the crimes actually occurred.

The Court recognized that the public would be better protected from criminal mayhem, if officers could detain suspects for a reasonable period of time for investigation in the absence of probable cause that would be required to support an arrest.

To meet this perceived need, the Court created the legal concept of investigative detention which is also known as stop and frisk. The Court ruled that henceforth law enforcement officers would have the right, consistent with the Fourth Amendment — to stop, detain and question persons suspected of criminal activity, as long as they possessed facts and reasonable inferences drawn from those facts that amounted to a reasonable suspicion that criminal activity may be present.^[3] This was to be considered a detention for investigation — not an arrest — and probable cause was not required. ^[4]

The Court further observed that such investigative stops are often inherently dangerous for police officers and consequently gave officers the additional constitutional right to “pat down” or “frisk” the person detained for weapons as long as the officers possess facts amounting to a “reasonable fear” for their safety. The Court made it abundantly clear that this so-called “frisk” for weapons was to be limited in scope to a pat down of the outer clothing for weapons only. It was not to be used to search for possible evidence of criminal activity.

A SUCCESSFUL TOOL

The stop and frisk tool for law enforcement has been particularly useful in addressing violent crime problems of a recurring nature and protecting officer safety. Inner city gang wars occur with regularity in all of our major cities across the United States. Gang members regularly carry firearms to protect themselves, their turf, and their illegal drug operations from attacks orchestrated by rival gangs.

These attacks, often motivated by revenge and retaliation for perceived or actual wrongs, threaten the lives of rival gang members and often result in shooting deaths and serious bodily injury to the victims. Moreover, innocent bystanders, including children, are sometimes shot and wounded or killed in the senseless gunfire. Because of the brazen nature of these shootings, innocent law-abiding citizens who live in these neighborhoods are often afraid to leave their homes.

In 2013, Professor Lawrence Rosenthal, Chapman University School of Law, made some interesting observations in the process of defending the New York Police Department (NYPD) use of the stop and frisk investigative tool. Professor Rosenthal noted that in 1991 the NYPD adopted a new strategy of crime prevention that emphasized foot patrols and enforcing laws against minor criminal activity. Moreover, according to Professor Rosenthal, in 1994 the NYPD began to place greater emphasis on use stop and frisk tactics which targeted “hot spots” of criminal activity.

Professor Rosenthal reported that the results of this emphasis on stop and frisk were quite dramatic. Rosenthal stated that between 1991 and 2009, New York City experienced the broadest and deepest decline in violent crime of any major city in America. In fact, Rosenthal reported that in 2012, the New York City homicide rate dropped from 31 per 100,000 people in 1991 to 5.05 per 100,000 people, an amazing public safety achievement.

More astounding still was the dramatic decline in homicide rates among the black and Hispanic populations. Black homicide rates in New York City in 1991 were 58 per 100,000 people. By 2007, that same rate declined to 15.9 per 100,000. The 1991 homicide rate for Hispanics was 44 per 100,000. In 2007, that rate was reduced to 4.9 per 100,000.

Bad guys interested in maiming and killing their rivals are far less likely to carry firearms to further their illegal goals when they know for certain that police officers are likely to stop and frisk them. This protects not only the bad guys from each other, but also serves to protect the thousands of innocent persons who live in these high crime areas. Further, the lives of officers across America are much safer when the bad guys walk and drive on the streets without their guns.

In order to avoid civil rights litigation, evidence suppression and public criticism, investigative detentions must be accomplished lawfully. Lawful investigative detentions must adhere to the following constitutional points of law:

1. Officers may approach persons in public places and attempt to engage them in conversation without any suspicion that they may be involved in criminal activity.
2. The person approached without “reasonable suspicion” is not required to speak with the officer, produce identification, or otherwise remain in the area. The person may simply walk away and the officer has no right to detain them.[\[5\]](#) This is what is known as a “mere encounter.”
3. Officers who possess a “reasonable suspicion” that a person may be involved in criminal activity have a constitutional right to stop and detain, — “seize” — that person for a reasonable period of time to investigate the situation. [\[6\]](#)
4. “Reasonable suspicion” is present when an officer has articulable facts and reasonable inferences drawn from those facts that indicate that criminal activity may be present.[\[7\]](#)
5. “Reasonable Suspicion” can include a number of separate factors that when taken together combine to support a police officer’s belief that criminal activity may be occurring. These factors may include but not be limited to: time of day, reputation of the geographical area, reputation of the person to be detained (a known gang member, for example), furtive or evasive behavior, flight, confrontational or abrasive attitude, clothing, etc.
6. An officer who detains a citizen for investigative purposes must be prepared to recite all of the reasons as to why he/she detained the suspect and should make a written record of them as soon as it is practicable to do so.
7. Investigative detentions should take place and continue at the location where the stop was initiated, absent extraordinary circumstances. Movement of the suspect to the

police station or the back seat of a patrol car or other location against his/her will, will likely be construed later as an arrest.[\[8\]](#)

8. Officers must understand that an arrest under the Fourth Amendment must be justified by the higher standard of “probable cause.” [\[9\]](#) If an investigative detention becomes an arrest, it will be declared unconstitutional in the absence of “probable cause.”

9. Officers who have “reasonable suspicion” to stop and detain a suspect have a lawful right to maintain that detention for a reasonable period of time as long as they are diligently pursuing an investigation to resolve the reason for the stop. The Supreme Court has never set an arbitrary time limit on the investigate detention concept.[\[10\]](#)

10. Officers may not detain a person longer than the time required to reasonably investigate the purpose of the stop. Holding a person for a longer time is likely to be interpreted as an arrest that will be declared illegal in the absence of probable cause.[\[11\]](#)

11. Officers conducting a Terry stop, including a routine traffic stop, are not required to provide the detained individual with Miranda warnings prior to asking questions.[\[12\]](#)

12. Officers who detain a person for investigation based upon reasonable suspicion that criminal activity may be afoot are not permitted to “frisk” the person detained unless they possess a “reasonable fear” for their safety.[\[13\]](#)

13. A “frisk” of a detained person must be limited to a “pat down” of the person’s outer clothing for weapons only. A search for evidence of criminal activity is not permitted.[\[14\]](#)

14. Officers making a Terry stop of a vehicle may conduct a search of the passenger compartment of the vehicle to look for weapons as long as they possess a “reasonable fear” that weapons may be hidden in the passenger compartment.[\[15\]](#)

Keep these things in mind as you go about the business of policing your jurisdiction, and you will accomplish the mission of preventing crime and protecting the citizens you serve.

Footnotes

[\[1\]](#) 392 U.S. 1 (1968).

[\[2\]](#) The Court ruled that the facts gathered by the officer were sufficient to justify an investigative detention of the suspects because they amounted to a **reasonable suspicion** that criminal activity was afoot.

[\[3\]](#) The Court explained that **reasonable suspicion** involves a lesser standard of proof than probable cause for arrest and involves a police officer justifying an investigative seizure by pointing to “**specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion.**” Id. at 21.

(emphasis added). The Court explained that **reasonable suspicion** is an **objective standard** which assesses the facts available to the officer at the moment of the seizure to determine whether they would amount to a reasonable belief that criminal activity may be present.

[4] **Probable Cause** is also an objective standard that determines whether a law enforcement officer is in possession of sufficient facts and circumstances and reasonable inferences drawn from them to support a full custody arrest of an individual. In other words, probable cause requires sufficient facts and circumstances for an officer to reach a reasonable belief that the person to be arrested has committed a particular criminal act. Because an arrest is a greater intrusion into a person's freedom and liberty than an investigative detention, the objective standard for judging the officer's action is higher, i.e. probable cause vs. reasonable suspicion.

[5] United States v. Drayton, 536 U.S. 194, 200 (2002); Florida v. Rodriguez, 469 U.S. 1, 5-6 (1984).

[6] Terry v. Ohio, 392 U.S. 1 (1968).

[7] *Id.* The Supreme Court found **reasonable suspicion** to exist when federal Drug Enforcement Agents detained an airline passenger who met several characteristics of a "drug courier" profile developed by the Drug Enforcement Administration (DEA). These characteristics included the fact that the passenger traveled to a major drug source city; used cash to purchase tickets; traveled under an alias; had no checked bags; was visibly nervous when observed during the trip and remained only 48 hours in the source city in spite of the fact that a round trip took 20 hours. See, United States v. Sokolow, 490 U.S. 1, 9 (1989).

Likewise, the Supreme Court ruled in United States v. Sharpe, 470 U.S. 675 (1985) that DEA agents had **reasonable suspicion** to stop and detain two vehicles based upon the fact that they were traveling in tandem in an area known for drug smuggling; pick-up trucks with camper shells are often used to transport large quantities of marijuana; the pick-up truck appeared to be loaded down (with suspected marijuana) and the windows of the camper were covered with a quilted bed sheet. Moreover, both vehicles engaged in evasive style maneuvers and started speeding when a marked police car began to follow them. The Court explained, "perhaps none of these facts, standing alone, would give rise to a reasonable suspicion; but taken together as appraised by an experienced law enforcement officer, they provided clear justification to stop the vehicles and pursue a limited investigation."

In Illinois v. Wardlow, 528 U.S. 119 (2000), the Supreme Court ruled that police officers developed **reasonable suspicion** when they drove into an area within the City of Chicago that was known for heavy narcotics trafficking and observed Wardlow standing next to a building, holding an opaque bag. The officers saw Wardlow look in their direction and flee by running away down an alley.

[8] See, Florida v. Royer, 460 U.S. 491 (1983). See also, Dunaway v. New York, 442 U.S. 200 (1979).

[9] See, Florida v. Hayes, 470 U.S. 811 (1985). Here the Court ruled that police officers who took the defendant to the police station from his home without his consent to fingerprint him, arrested him without probable cause. The Court explained that this

could not be justified as an investigative detention under Terry.

[10] See, United States v. Sharpe, 470 U.S. 675 (1985). In this case, the Court ruled that a 20 minute detention based upon reasonable suspicion at its inception was lawful because the officers diligently pursued a means of investigation that was likely to confirm or dispel their suspicions quickly without unnecessary delay.

[11] Rodriguez v. United States, (No.-13-9972) 575 U.S. ____ (4/21/15).

[12] Berkemer v. McCarty, 468 U.S. 420, 440 (1984).

[13] See, Terry v. Ohio, 392 U.S. 1 (1968).

[14] Id.

[15] Michigan v. Long, 463 U.S. 1032 (1983).

About the author

John M. “Mike” Callahan Jr. served in the field of law enforcement for 44 years. He was appointed as a Special Agent with the United States Naval Criminal Investigative Service, appointed as a Special Agent with the FBI and advanced to the position of Chief Division Counsel and handled all legal matters for those FBI Divisions. After his FBI career, Mr. Callahan was hired by the Massachusetts Office of the Inspector General and served for several years as a Deputy Inspector General in charge of the Investigations Division before retiring in July 2012.

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