



POLICE / PROSECUTOR UPDATE

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A request has been made that we review the law governing **investigatory stops and frisks**. Initially, it should be noted that not all police-citizen encounters raise constitutional questions. The issue is whether a person has been "seized." For example, the Fourth Amendment is not violated merely by approaching an individual in a public place and asking him if he is willing to answer some questions. However, the individual may not be detained, even momentarily, without reasonable, objective grounds for doing so, and his refusal to listen or answer questions does not furnish those grounds.

Seizure- A "seizure" occurs for constitutional purposes only when there is a governmental termination of freedom of movement through some means intentionally applied. A court must consider all the circumstances surrounding the encounter to determine whether police conduct would have communicated to a reasonable person that the person "was not free to decline the officer's requests or otherwise terminate the encounter." In order for a "seizure" to have occurred, there must be either the application of physical force, however slight, or, where force is absent, submission to an officer's "show of authority" to restrain the subject's liberty.

Stop & Frisk - Reasonable Suspicion Standard
A police officer may make an initial investigatory stop of a person, or vehicle, even though probable cause to arrest is lacking, when "specific and articulable" facts known to the officer at the time of the stop are such as to warrant a man of reasonable caution to believe that an investigation is appropriate. The likelihood of criminal activity need not rise to the level of probable cause, and the existence of reasonable suspicion is determined by examining the totality of the circumstances. Courts may not examine each fact in isolation to look for an innocent explanation; the determination that reasonable suspicion exists need not rule out the possibility of innocent conduct. Also, a brief detention is permitted when a police officer believes a person has committed an infraction or ordinance

violation. It is not restricted to investigations of criminal activity.

Permissible Length of Detention - There is no firm rule or formula to determine the permissible length of a stop and detention. Common sense and ordinary human experience govern. Basically, the police must diligently pursue a means of investigation likely to confirm or dispel their suspicions quickly.

Frisks - Points to remember - (1) there must first be a valid investigatory stop; (2) not every such stop will justify a search for weapons; (3) the officer must reasonably believe that the particular suspect is armed and dangerous to himself or others. The officer need not be absolutely certain that the individual is armed. The test is whether a reasonably prudent man in the officer's circumstance would be warranted in the belief that his safety or that of others is in danger.

Frisk - Extent or Scope - (1) there can be no generalized cursory search or a search aimed at anything but weapons; (2) the frisk must be limited to a pat-down of the outer surfaces of a person's clothing; (3) an object should reasonably seem to be some sort of weapon before being seized.

Vehicle Frisk - as with investigatory stops of the person, police may similarly make investigatory stops of vehicles. A search of the passenger compartment of an automobile, limited to those areas in which a weapon could be placed or hidden, is permissible if the officer possesses a reasonable belief based on specific, articulable facts which would reasonably warrant the officer in believing the suspect is dangerous and could gain immediate control of weapons.

Weapons Inquiry - The Fourth Amendment does not prohibit police from routinely inquiring about the presence of weapons during a routine traffic stop.