

 <b>Lexington Police Department</b>	<b>Subject: Stop And Frisk and Threshold Inquires</b>					<b>Policy Number:</b>  <h1>41L</h1>	
	<b>Accreditation Standards:</b> Reference: 1.2.3(a); 1.2.4(b)					<b>Effective Date:</b> 3/11/13	
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<b>By Order of:</b> Mark J. Corr, Chief of Police							

*The Municipal Police Institute, Inc. (MPI) is a private, nonprofit charitable affiliate of the Massachusetts Chiefs of Police Association. MPI provides training and model policies and procedures for police agencies. This policy is an edited version of MPI Policy 1.07, "Stop and Frisk and Threshold Inquiries."*

## GENERAL CONSIDERATIONS AND GUIDELINES

Any individual walking down the street is insulated from police action by the Fourth Amendment of the U.S. Constitution. Therefore, before police can effect a seizure or detention, even if only momentarily, the police must have adequate cause to do so. On the other hand, police officers often engage people on the street in conversation and are encouraged to do so under the community policing philosophy. Simply walking over to a person and engaging in a conversation is not a seizure or detention, it is just a conversation and nothing more. The person talking with the officer has an absolute right to walk away in such encounter.

A police officer, in appropriate circumstances, 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 his/her 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, investigate further, or to take no police action at that time. (M.G.L. Ch. 41 § 98)

This policy recognizes that police officers are also charged with community caretaking functions that do not require judicial justification. These do not include the detection, investigation or the acquisition of evidence related to crime, i.e. approaching a vehicle parked in a breakdown lane will not be an investigatory stop or checking on motorists in rest areas.<sup>1</sup>

A search for weapons is permissible where a police officer has reason to believe that [s]he is dealing with an armed and dangerous individual, regardless of whether the officer has probable cause to arrest for a crime. The officer need not be absolutely

certain that the individual is armed. The issue is whether a reasonably prudent person in the circumstances would be warranted in his/her belief that the officer's safety, or that of others, was in danger.<sup>ii</sup>

Investigatory "stops" by the police are considered "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 of that incident.

If an officer fails to adequately enforce a "stop", it could result in the escape of a dangerous criminal or pose a serious threat to the lives and safety of other persons. Conversely, the use, display or threatened use of force to carry out an investigatory "stop", when such force was not justified under the circumstances, could result in a finding by the court that an arrest had occurred without the necessary element of probable cause and any evidence obtained as a result might be excluded. It should be noted that a premature or unnecessary "stop" could sometimes destroy a good investigation, which could have resulted in a valid arrest and a successful conviction.

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 action is not only frowned upon by the Courts but detracts from the professional image of the police by the citizens of the community they serve.

It is the policy of the Lexington Police Department that:

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

## PROCEDURE

### A. Definitions:

1. **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."
2. **Stop & Frisk:** The warrantless stopping, questioning and frisking of suspicious persons derived from the U.S. Supreme Court case Terry v Ohio, 392 U.S. 1, 88 S. Ct. 1868 (1968).<sup>iii</sup>
3. **Threshold Inquiry:** The warrantless stopping, questioning and frisking of suspicious persons based on a Massachusetts General Law Ch.41§ 98.

B. Stops [1.2.4(b)]:

1. It is a basic police duty to check on suspicious persons or circumstances, particularly in the nighttime and in crime-prone areas.
2. An officer may make a brief investigative stop and inquiry if he or she has a reasonable suspicion that the person involved:<sup>iv</sup>
  - a. Has committed a crime.
  - b. Has been or is committing a crime.
  - c. When [s]he seeks to prevent a crime which [s]he reasonably believes is about to be committed.
3. A police officer has the authority to stop a person for an investigative inquiry in any place where the officer is lawfully present, including:
  - a. Any public place;
  - b. Any place or area open to the public; and
  - c. Any private premises entered with a valid warrant, by consent, or under emergency circumstances.
4. There is no precise formula for determining the legality of an investigatory stop. However, 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. The officer must be able to articulate this reason with specificity when called upon to document such actions.
5. 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. 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.
6. No single factor alone is normally sufficient. The following are some, but not all 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 by 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 actions that are indicative of possible criminal conduct;

#### 41L-Stop and Frisk and Threshold Inquiries

- e. The person's proximity to the scene of a recently reported crime;
  - f. Unprovoked flight of an individual upon noticing the police;<sup>v</sup>
  - g. Specific 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.
7. The fact that the individual has aroused the police officer's suspicion should cause the officer to make his/her approach with vigilance and to be alert for any possibility of danger.
- a. A police check of suspicious circumstances may uncover the commission of a serious crime or the presence of a dangerous criminal.
  - b. If the person stopped had just committed a major crime, [s]he may be a threat to the officer's safety, or may suddenly attempt to flee from the scene.
8. 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.<sup>vi</sup>
- a. A stop may only last long enough for the officer to make the threshold inquiry into whether the suspicions were or were not well founded using the least intrusive means possible.
  - b. 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 and extend the investigative effort.<sup>vii</sup>
  - c. The period of investigative detention should be sufficiently brief so that the "stop" cannot be construed as an "arrest," which would require probable cause.<sup>viii</sup>

#### C. Pat-Down Frisks [1.2.4(b)]:

1. 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.<sup>ix</sup> (M.G.L. Ch. 41 § 98)
  - a. It is not necessary that the officer be absolutely certain that such person is armed. However, the officer must perceive danger to himself/herself or

others because of events leading to the stop or which occurred after or during the stop.

- b. If the officer has a 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 individual, [s]he should immediately check that area before performing a general pat down.
- c. A frisk should not be made as a pretext to search for evidence of crime; it must be limited to protective measures.
- d. The frisk must initially be limited to an external pat down of the suspect's outer clothing. However, if such outer clothing is bulky, (like a heavy overcoat) it may be opened to permit a pat down of inner clothing.
- e. Officers of the same sex should be used for pat-down frisks, when available. When a pat-down is to be 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)
- f. 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.
- g. If, after completing a pat down of the suspect for weapons, the officer does not feel an object, which could reasonably be a weapon, the search shall be discontinued.
- 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 search incident to that arrest should be made.
- i. If the subject is in control of a container that is immediately accessible, an exterior pat down of the container should be done. If the outer shell is hard and an exterior pat down would not prove fruitful in the detection of any weapons then the item should be opened and a cursory review of its contents should be reviewed prior to returning the container.

**NOTE:** Hard and Soft Locked Containers: A pat frisk can be extended to both hard and soft-shell containers. If a hard or soft shell container is locked, entry is not permissible without probable cause. A strategy for officer safety should be for officers to remove containers from the possession of the subject for a brief period and return them as soon as the encounter is complete.

D. Use of Force:

1. 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.<sup>x</sup>
2. Force may be used to “stop” an individual, as long as the force is both necessary and proportionate to the situation.<sup>xi</sup> If an officer is attacked, sufficient and reasonable force may be used to defend themselves and to ensure personal safety. (See Department policy **41B – Use of Force (Defensive Actions)**)

E. Questioning Stopped Persons [1.2.3(a)]:

1. When an officer makes a decision to stop a person for investigative purposes, unless the officer is in uniform and conspicuously displaying his/her badge of office, [s]he shall identify himself/herself as a police officer as soon as it is safe and practical to do so and also announce the purpose of his/his inquiry unless such information is obvious.
  - a. An investigatory or threshold inquiry should begin with exploratory questions regarding the person's identity and his/her purpose.
  - b. Every officer should acquire the ability to initiate an investigative inquiry in a calm, conversational manner in order to gain as much information as possible without placing the suspect on the defensive.
  - c. Even in brief conversations, an alert and perceptive officer can detect or sense that something is wrong, can articulate that information with specificity and determine that further police investigation is required.
  - d. An officer should always bear in mind, however, that [s]he must have a firm foundation for his/her initial suspicions in order to justify an investigative detention and inquiry. [S]he must be able to articulate and commit his/her justification to writing.
  
2. Once a stop is made, questioning of the person should be conducted at the location of the stop.
  - a. Investigative stops are intended to be on-the-spot inquiries. Officers should always be aware of safety when questioning a person on the spot.
  - b. To verify the information obtained from the person it may be necessary to move a short distance to a radio or telephone.
  - c. Under special circumstances, such as the presence of a hostile crowd, heavy traffic or the necessity to use the police radio, the person may be placed in the rear seat of a police vehicle.
  - d. 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.<sup>xii</sup> See Department policy **41N - Eye Witness ID, Show-Ups and Photo Arrays**.
  - e. Ordering a person to stop or if a stopped person is told to move to another location, or tries to leave, but the officer orders him/her to stay or otherwise limits his/her movement, the person may be considered "in custody" (although not under arrest).<sup>xiii</sup> Once a person is in custody, additional questioning by police must be preceded by Miranda warnings and receipt of a waiver

before further questioning. (See Departmental policy **41K - Interrogating Suspects and Arrestees.**)

F. Motor Vehicle Stops:

1. 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.<sup>xiv</sup> All police officers must be especially alert and watchful when making an investigative stop of a motor vehicle as many officers have been seriously injured or killed during this police activity.
  - a. Police cannot randomly stop motorists to check the orderliness of license and registration.
  - b. During the course of a stop, probable cause to search the vehicle may develop – such as through conversation with the occupants or plain view observations.<sup>xv</sup>
  - c. During a 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.<sup>xvi</sup>
    - i. If the occupant(s) of a vehicle are ordered out of the vehicle, they may be frisked if there is reason to believe that they may be armed or dangerous and that the police officers or others nearby may be endangered.<sup>xvii</sup>
    - ii. Even after frisking the occupants, if officers have reason to believe that there is still danger, they should inspect those areas of the motor vehicle readily accessible to an occupant that may contain a dangerous weapon before allowing occupants to re-enter the vehicle.
  - d. 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.<sup>xviii</sup>
  - e. 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.<sup>xix</sup>
  - f. Exit orders are permissible where officers have reasonable suspicion of criminal activity. They must be proportional to the suspicion that prompted the intrusion and serve to prevent the defendant's escape, protect the safety of the officers from a fleeing vehicle or high-speed pursuit. (Comm. vs Bostick 450 Mass 616)
2. While an officer may detain a passenger during a traffic stop, even without particularized reasonable suspicion that the passenger has committed any crime, police officers may not continue the detention of the passenger beyond the completion of the issued citation, without

further reasonable suspicion to investigate matters not related to the traffic offense.<sup>xx</sup>

3. 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.<sup>xxi</sup>

G. Documentation:

Police officers initiating investigative detentions shall notify dispatch as soon as is reasonably possible and provide information relative to the identity of the person(s) stopped and all important facts. A journal note will be created in all cases of investigative detentions regardless of the outcome.

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<sup>i</sup> *Com. v. McDevitt*, 57 Mass. App. Ct. 733 N.E.2d 404 (2003); *Comm. v. Evans*, 436 Mass. 369, 764 N.E.2d 841 (2002).

<sup>ii</sup> *Com. v. Matthews*, 355 Mass. 378, 244 N.E.2d 908 (1969).

<sup>iii</sup> *Terry v. Ohio*, 392 U.S. 1, 88 S.Ct. 1868 (1968).

<sup>iv</sup> *Com. v. Riggieri*, 438 Mass. 613, 782 N.E.2d 497 (2003).

<sup>v</sup> *Illinois v. Wardlow*, 120 S.Ct. 673 (2000).

<sup>vi</sup> *U.S. v. Sharpe*, 470 U.S. 675, 105 S.Ct. 1568 (1985); *Com. v. Tossi*, 14 Mass. App. Ct. 901, 442 N.E.2d 419 (1982).

<sup>vii</sup> *Com. v. Wilson*, 360 Mass. 557, 276 N.E.2d 283 (1971).

<sup>viii</sup> *Com. v. Torres*, 424 Mass. 153, 674 N.E.2d 638 (1997).

<sup>ix</sup> See M.G.L. c. 41, s. 98

<sup>x</sup> *Com v. Pandolfino*, 33 Mass. App. Ct. 96, 596 N.E.2d 390, *rev. den.* 413 Mass. 1106, 600 N.E.2d 1000 (1992).

<sup>xi</sup> *Com. v. Reed*, 23 Mass. App. Ct. 294, 502 N.E.2d 147 (1986); *Com. v. Borges*, 395 Mass. 788, 482 N.E.2d 314 (1985).

<sup>xii</sup> *Com. v. Salerno*, 356 Mass. 642, 255 N.E.2d 318 (1970).

<sup>xiii</sup> *Com. v. Perry*, 62 Mass.App.Ct. 500, 503- 504, 818 N.E.2d 185, 188-189 (2004).

<sup>xiv</sup> *Delaware v. Prouse*, 440 U.S. 648, 99 S.Ct. 1391 (1979).

<sup>xv</sup> *Com. v. Lantigua*, 38 Mass. App. Ct. 526, 649 N.E.2d 1129 (1995); *Com. v. Jimenez*, 22 Mass. App. Ct. 286, 493 N.E.2d 501 (1986).

<sup>xvi</sup> *Com. v. Gonsalves*, 429 Mass. 658, 711 N.E.2d 108 (1999) rejecting *Penn. v. Mimms*, 434 U.S. 106, 98 S.Ct. 330 (1977).

<sup>xvii</sup> *Com. v. Hawkes*, 362 Mass. 786, 291 N.E.2d 411 (1973); *Com. v. Lantigua*, 38 Mass. App. Ct. 526, 649 N.E.2d 1129 (1995).

<sup>xviii</sup> *Com. v. Silva*, 366 Mass. 402, 318 N.E.2d 895 (1974).

<sup>xix</sup> *Com. v. Almeida*, 373 Mass. 266, 366 N.E.2d 756 (1977).



<sup>xx</sup> *Com. v. Ellsworth*, 41 Mass.App.Ct. 554, 671 N.E.2d 1001 (1996). *United States v. Starks*, 301 F.Supp.2d 76 (D.Mass.2004).

<sup>xxi</sup> *Delaware v. Prouse*, 440 U.S. 648, 99 S.Ct. 1391 (1979).