

SEARCH AND SEIZURE- “TERRY STOPS” (LAW ENFORCEMENT PERSONNEL)

OBJECTIVES

- Staff will learn current search and seizure principles specific to Terry Stops
- Staff will review the department’s search and seizure policies pertaining to Terry Stops

The 4th Amendment to the United States Constitution and Article II, Section 10 of the New Mexico Constitution both protect citizens from unreasonable searches and seizures by law enforcement. When law enforcement officers violate these constitutional provisions the evidence they obtain is subject to suppression and may not be used for criminal prosecution. The law enforcement officers and the agency are also subject to civil liability for damages resulting from constitutional deprivation.

“Terry Stops,” sometimes called “Stop and Frisks,” refer to a U.S. Supreme court case called *Terry v. Ohio* that was decided in 1968. In that case the U.S. Supreme Court held that under some circumstances it is okay to stop and briefly frisk an individual for weapons even if the officer does not have probable cause for an arrest. The Court said:

When a police officer observes unusual conduct which leads him to reasonably conclude in light of his experience that criminal activity may be afoot and that the persons with whom he is dealing may be armed and presently dangerous, where in the course of investigating this behavior he identifies himself as a policeman and makes reasonable inquiries and nothing in the initial stages of the encounter serves to dispel his reasonable fear for his own or other’s safety, he is entitled for the protection of himself and others in the area to conduct a carefully limited search of the outer clothing of such persons in an attempt to discover weapons which might be used to assault him.

Terry stops are investigatory. They are designed to address immediate suspicions of current illegal conduct. They are based upon reasonable suspicion that criminal activity “may be afoot.” Officers may stop a pedestrian or a vehicle. Because probable cause is not required the purpose and scope of the stop and frisk is limited.

PURPOSE FOR STOP

Stops are permitted when the officer reasonably suspects that the person to be stopped has just committed, is committing, or is about to commit a criminal offense. Reasonable

suspicion depends upon the reliability and content of the information possessed by the officer. Terry stops should only be used to investigate serious offenses.

WITNESS STOPS

Terry Stops typically involve temporary seizure of suspects as opposed to witnesses. But it can be appropriate to seize a witness when the officer has reasonable cause to believe that:

- a crime involving charges of forcible injury to persons or of appropriation or damage to property, has just been committed near where the officer finds the witness;
- the witness has knowledge of material aid to the investigation of the crime;
and
- seizure is reasonably necessary to obtain or verify the identification of the witness or to obtain an account of the crime.

SCOPE OF SEARCH

Officers conducting Terry Stops may search the outer clothing of the suspect to check for weapons. The sole purpose of this frisk is to determine whether the subject has a weapon. A frisk for weapons is a less extensive search than the search an officer may perform incident to an arrest. In order to qualify as a "Terry Stop" the officer must be conducting the frisk search for safety reasons in order to determine whether the subject has a weapon and not for other purposes (e.g., to see if the subject is carrying drugs). However, an officer may seize incriminating evidence observed in plain view during the course of a protective pat down so long as the incriminating nature of the evidence is immediately apparent so the officer has probable cause to believe it is evidence of a crime.

DURATION OF STOP AND FRISK

The stop and frisk must be brief and cannot last longer than the time reasonably required to serve its lawful purpose. Stops that last too long may become unlawful. The length and intrusiveness of the stop must be justified by the circumstances. If the initial stop dispels the officer's concerns, the stop must go no further and the detained individual is free to go. However, if the results of the initial stop arouse further suspicion or confirm the officer's suspicion, the stop can be prolonged and the scope enlarged as justified by the circumstances.

TERRY STOP CONSIDERATIONS

- The purpose of the stop must be crime prevention.
- The purpose of the frisk must be officer safety.
- The stop and frisk must be brief and may not be prolonged beyond the time reasonably required to serve its lawful purpose.

POLICY

Discuss the department's search and seizure policies.

CLOSING

- *Encourage discussion about Terry stops and the department's current practice of conducting Terry Stops.*