

From the Chief's Desk

Stop and Frisk

Over the last several of years there have been occasional news stories about Police conducting "Stop and Frisk" actions. I have observed "experts" talk about departments conducting "stop and frisks" and their effects on crime, community relations, etc. I am continually disappointed in the reporting of "Stop and Frisk" because it leaves the impression that "Stop and Frisk" is a police strategy. I thought I might try to do a better job of explaining "Stop and Frisk" here.

MYTHS

As I mentioned the first myth of "Stop and Frisk" is that it's a patrol or crime suppression strategy.

The second myth is that the term "stop" is bound to the term "frisk". Both terms have specific and separate legal definitions and requirements. However, except in rare circumstances, a "frisk" is conducted during a "stop".

FRISKS

Let me start with what "Frisks" (also known as "Pat-Downs") are and why the US Supreme Court makes allowances for them. Frisks are minimal searches of an individual by a police officer. When I say minimal I mean an external patting of the clothing. If a weapon is felt during this patting of the clothing the officer can extend the frisk into a warrantless and more intrusive search to recover the weapon for his protection. This scenario is the very reason the US Supreme Court, in *Terry v Ohio*, recognized a police officer's right *"to protect themselves by searching an individual for weapons, regardless of whether there is probable cause to arrest the person for a crime."*

Although in almost all circumstances where a frisk occurs the person is "stopped" that does not mean that a police officer can automatically conduct a "frisk"! *"A frisk must be supported by reasonable suspicion to believe that the individual who has been lawfully stopped is armed and dangerous. Courts have ruled that the presence of danger is suggested by (1) information that a particular person is armed, (2) suspicious bulges in the suspect's clothing, (3) the nature of the suspected criminal activity, and (4) the observation of weapons in the vicinity of a person who has been lawfully stopped."*

It is more difficult to justify a frisk of someone dressed in a tight swimsuit than someone bundled up in winter clothing.

It should also be noted that suspected illegal items felt during a "frisk" can be removed as well. Additionally, weapons include items that can be used as weapons (like a hammer) are subject to being removed by an officer. Items that are legally possessed, but removed from the person during a frisk, are returned to the subject at the end of the contact if no crime has been committed.

STOPS

A "stop" is defined in the landmark US Supreme Court decision of *Terry v Ohio*. The Court noted that a law enforcement officer "may in appropriate circumstances and in an appropriate manner approach a person for the purposes of investigating possible criminal behavior even though there is no probable

cause to make an arrest." The Court went on to state that it "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 known to the officer at the time."

An officer who sees an individual walking from behind the Grocery Store at 1:00 am, well after closing hour, could justify "stopping" the individual. Unless other facts are developed the "stop" could not extend beyond a reasonable time to investigate the situation. In this situation, the officer may be able to justify a "frisk" of the individual as well.

OTHER POLICE CONTACTS

Not every contact with a police officer is a "stop". We refer to these contacts as "mere contact" or "mere conversation". Getting out of the police car and talking to people in our communities is key to the success of community policing. While working in a minority community most of my patrol career the majority of my contacts were not "stops".

SUMMARY

Police agencies often respond to problem areas with increased presence as a strategy to reduce crime and improve community livability. This strategy that continues to be successful since it is often generated by the community and/or crime analysis. It can lead to an increase in "stops" and some stops will involve a "frisk". To look at it another way, a "Stop" is a responsibility assigned to police officers to protect communities and a "Frisk" is a right for officers to protect themselves.

Sources:

<https://www.ncjrs.gov/app/publications/abstract.aspx?id=100764>

<https://www.ncjrs.gov/pdffiles1/Digitization/99926NCJRS.pdf>