

# Seattle Police Manual

## 6.220 – Voluntary Contacts & *Terry* Stops

Effective Date: TBD

### **6.220-POL**

This policy applies to all voluntary contacts and *Terry* stops conducted by officers.

#### **1. *Terry* Stops are Seizures and Must Be Based on Reasonable Suspicion in Order to be Lawful**

A *Terry* stop must be based on reasonable suspicion and documented using specific articulable facts as described in this policy.

This policy prohibits *Terry* stops when an officer lacks reasonable suspicion that a subject has been, is, or is about to be engaged in the commission of a crime.

Searches and seizures by officers are lawful to the extent they meet the requirements of the 4th Amendment and Washington Constitution Art. 1, Section 7.<sup>1 2 3</sup>

A *Terry* stop is a seizure for investigative purposes. A seizure occurs any time an officer, by means of physical force or show of authority, has in some way restrained the liberty of a citizen. A seizure may also occur if an officer uses words, actions, or demeanor that would make a reasonable person believe that he or she is not free to go.

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<sup>1</sup> See *Terry v. Ohio*, 392 U.S. 1 (1968). ([hyperlink](#))

<sup>2</sup> See Art. 1, Sec. 7. ([hyperlink](#))

<sup>3</sup> See 4<sup>th</sup> Amendment ([hyperlink](#))

## 2. Officers Must Distinguish Between Voluntary Contacts and Terry Stops

### a. Voluntary Contacts Defined

There are two categories of voluntary contacts:

- *Social Contact:* A voluntary, consensual encounter between the police and a subject with the intent of engaging in casual and/or non-investigative conversation. The subject is free to leave and/or decline any of the officer's requests at any point; **it is not a seizure.**
- *Non-Custodial Interview:* A voluntary and consensual investigatory interview that an officer conducts with a subject during which the subject is free to leave and/or decline any of the officer's requests at any point. **It is not a seizure.**

Voluntary contacts are not seizures. During voluntary contacts, officers must not use any words, actions, demeanor, or other show of authority that would tend to communicate that a person is not free to go.

### b. Terry Stops Defined

- *Terry Stop:* A brief, minimally intrusive seizure of a subject based upon articulable reasonable suspicion in order to investigate possible criminal activity. The stop can apply to people as well as to vehicles. The subject of a *Terry* stop is not free to leave. A *Terry* stop is a seizure under both the State and Federal constitutions.
  - *Reasonable Suspicion:* Specific, objective, articulable facts, which, taken together with rational inferences, would create a well-founded suspicion that there is a substantial possibility that a subject has engaged, is engaging or is about to engage

in criminal conduct.

- The reasonableness of the *Terry* stop is considered in view of the totality of the circumstances, the officer's training and experience, and what the officer knew before the stop. Information learned during a stop can lead to additional reasonable suspicion or probable cause that a crime has occurred, but cannot provide the justification for the original stop.

A *Terry Stop* is a detention short of an arrest. All other detentions must be made pursuant to the policies for arrests without a warrant (6.010-Reporting Arrests and Detentions), warrant arrests, (6.280-Warrant Arrests), traffic stops (16.230-Issuing Tickets and Traffic Contact Reports), or seizure of a person for a psychological evaluation (16.110-Crisis Intervention). (hyperlinks)

### **3. Officers May Conduct *Terry* Stops for Completed Misdemeanors Only Where There is a Risk to Public Safety**

Where there is no probable cause for an arrest and only reasonable suspicion justifying a *Terry* stop, officers may make *Terry* stops for completed misdemeanor crimes only when there is an associated public safety risk.

A public safety risk may exist when:

- The misdemeanor crime *by itself* poses a public safety risk (e.g., Assault, Harassment, Reckless Endangerment, Riot, DUI, Reckless Driving, weapons offenses), or
- There is a likelihood that the suspect will repeat the misdemeanor offense, or

- There is a potential for escalating conduct (e.g., a violation of a court order, domestic violence misdemeanors, Menacing, Stalking)

#### **4. During a *Terry* Stop, Officers Will Limit the Seizure to a Reasonable Scope**

Actions that would indicate to a reasonable person that they are being arrested or indefinitely detained may convert a *Terry* stop into an arrest requiring probable cause or an arrest warrant.

Unless justified by the articulable reasons for the original stop, officers must have additional articulable justification for further limiting a person's freedom during a *Terry* stop, such as:

- Taking a subject's identification or driver license away from the immediate vicinity
- Ordering a motorist to exit a vehicle
- Putting a pedestrian up against a wall
- Directing a person to stand or remain standing, or to sit on a patrol car bumper or any other place not of their choosing
- Directing a person to lie or sit on the ground
- Applying handcuffs
- Transporting any distance away from the scene of the initial stop, including for the purpose of witness identification
- Placing a subject into a police vehicle
- Pointing a firearm
- Frisking for weapons
- De minimis force

Taking any of these actions does not necessarily convert a *Terry* stop into an arrest.

## **5. During a *Terry* Stop, Officers Will Limit the Seizure to a Reasonable Amount of Time**

Subjects may be seized for only that period of time necessary to effect the purpose of the stop. Any delays in completing the necessary actions must be objectively reasonable.

Officers may not extend a detention solely to await the arrival of a supervisor.

## **6. During all *Terry* Stops, Officers Will Take Reasonable Steps to Be Courteous and Professional, Including Identifying Themselves**

When reasonable, as early in the contact as safety permits, officers will inform the suspect of the following:

- The officer's name
- The officer's rank or title
- The fact that the officer is a Seattle Police Officer
- The reason for the stop
- That the stop is being recorded, if applicable (See Seattle Police Manual Section 16.090 – In-Car Video System)

When releasing a person at the end of a stop, officers will offer an explanation of the circumstances and reasons for the stop.

## **7. Officers Cannot Arrest Subjects Solely for Failure to Identify Themselves or Answer Questions on a *Terry* Stop**

In general, subjects are not obligated to provide identification upon request and have the right to remain silent. However, there are certain statutory

exceptions that do require the subject to identify himself or herself and which describe the officer's authority to take action if the person does not do so, such as:

- When the subject is a driver stopped for a traffic infraction investigation (RCW 46.61.021)
- When the subject is attempting to purchase liquor (RCW 66.20.180)
- When the subject is carrying a concealed pistol (RCW 9.41.050)

Officers may not transport a person to any police facility or jail merely for the purpose of identifying them unless they have probable cause.

## **8. Officers May Conduct a Frisk or Pat-Down of Stopped Subject(s) Only if They Reasonably Suspect That the Subject(s) May Be Armed and Presently Dangerous**

The purpose and scope of the frisk or pat-down is to discover weapons or other items which pose a danger to the officer or those nearby. It is not a generalized search of the entire person. The decision to conduct a frisk or pat-down is based upon the totality of the circumstances and the reasonable conclusions drawn from the officer's training and experience.

- A weapons frisk is a limited search determined by the state and federal constitutions.
- All consent searches must be conducted and memorialized pursuant to Manual Section 6.180.
- Officers may not frisk for weapons on a social contact or noncustodial interview.
- A frisk or pat down may not be used as a pretext to search for incriminating evidence.

- The fact that a *Terry* stop occurs in a high-crime area is not by itself sufficient to justify a frisk.

In addition to the basis for the stop itself, the officer must have reasonable suspicion that the subject may be armed and pose a threat to the officer and/or others. This may include, but is not limited to:

- Prior knowledge that the subject carries a weapon
- Suspicious behavior, such as failure to comply with instructions to keep hands in sight
- Observations, such as suspicious bulges, consistent with carrying a concealed weapon

The frisk for weapons is strictly limited to what is necessary for the discovery of weapons which might be used to harm the officer or others nearby. Generally, the frisk must be limited to a pat-down of outer clothing. Once the officer ascertains that no weapon is present after the frisk or pat-down is completed, the officer's limited authority to frisk is completed. (i.e. the frisk must stop).

## **9. Under State Law, Traffic Violations May Not Be Used as a Pretext to Investigate Unrelated Crimes for Which the Officer Lacks Reasonable Suspicion**

- Pretext is stopping a suspect for an infraction to investigate criminal activity for which the officer has neither reasonable suspicion nor probable cause.
- The Washington State Constitution forbids use of pretext as a justification for a warrantless search or seizure.
- Officers must actually, consciously, and independently determine that a traffic stop is reasonably necessary in order to address a suspected traffic infraction.
- Reasonableness of the stop is based on an objective view of all the facts, not the officer's subjective belief.

## **10. Officers Must Document All *Terry* Stops**

Officers must be able to clearly articulate the objective facts they rely upon in determining reasonable suspicion.

Officers must document all *Terry* stops and have a supervisor approve the documentation before they leave at the end of their shift. The data will be collected in an electronic form suitable for analysis. The documentation must contain at least the following elements:

- Original and subsequent objective facts for the stop or detention
- The reason (including reasonable suspicion or probable cause) and disposition of the stop (including whether an arrest resulted; whether a frisk or search was conducted and the result of the frisk or search; and whether the subject was moved or transported from the location of the initial stop)
- Demographic information pertaining to the subject, including perceived race, perceived age, perceived ethnicity and perceived gender; and
- Delays in completing necessary actions

## **11. Supervisors Shall Approve the Documentation of *Terry* Stops**

Absent extenuating circumstances, by the end of each shift, supervisors will review their officers' reports that document the *Terry* stops made during the shift to determine if they were supported by reasonable suspicion and are consistent with SPD policy, federal and state law.

If the *Terry* stops reviewed appear not to be supported by reasonable suspicion or are not consistent with SPD policy, federal and state law, the supervisor, in consultation with the watch commander, shall document and establish a strategy to remediate the situation. If a supervisor finds the documentation to be inaccurate or insufficient, that supervisor first shall require that the officer supplement the documentation before the end of

that shift. The supervisor will also determine if the incident requires referral to OPA.