



# OLR RESEARCH REPORT

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## INVESTIGATIVE DETENTION

By: George Coppolo, Chief Attorney

You asked what “investigative detention” is; under what circumstances can it be used; is there a limit in how long a person can be kept in that status; and do the state police use this technique?

### SUMMARY

Under the Fourth Amendment to the United States Constitution and Article I, § 7 of the Connecticut Constitution, a police officer is permitted to detain an individual for investigative purposes if the officer believes, based on a reasonable and articulable suspicion, that the individual is engaged in criminal activity, even if there is no probable cause to make an arrest. The ability to detain an individual under these circumstances is typically referred to as investigative detention.

The purpose of such a detention is to maintain the status quo while investigating the circumstances that give rise to the suspicion of criminal wrongdoing.

Once a lawful stop is made, a police officer's suspicions may become further aroused and the stop may be prolonged and the scope enlarged as required by the circumstances, provided the scope of the investigation remains within the limits created by the facts upon which the stop is predicated and the suspicion which they arouse.

Thus, the permissibility of a particular law enforcement practice is judged by balancing its intrusion on the individual's Fourth Amendment interests against its promotion of legitimate governmental interests. The intrusion must be confined to what is minimally necessary under the circumstances.

The courts have not established a maximum time period that police may constitutionally detain a suspect. The test is reasonableness under the circumstances.

William Blanchette, legislative liaison for the Department of Public Safety (hereafter referred to as the state police) advised us that the state police use investigative detentions. He provided us with the written guidelines the police follow. We have included them below.

## **INVESTIGATIVE DETENTION**

Under the United States Constitution and Article First, §§ 7 and 9 of the Connecticut Constitution, a police officer may in appropriate circumstances and in an appropriate manner detain an individual for investigative purposes if the officer believes, based on a reasonable and articulable suspicion that the individual is engaged in criminal activity, even if there is no probable cause to make an arrest (*State v. Lipscomb*, 258 Conn. 68, 75, (2001); *Terry v. Ohio*, 88 S.Ct. 1868 (1968)).

The police officer must be able to point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion. A court reviewing the legality of such a detention must look to the whole situation when determining whether detention is justified and consider if the detaining officers had a particularized and objective basis for suspecting the particular person stopped of criminal activity (*State v. Nash*, 278 Conn. 620 (2006)).

The Fourth Amendment, which applies to the states through the Fourteenth Amendment, guarantees the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures. Searches and seizures conducted outside the judicial process, without prior approval by judge or magistrate, are per se unreasonable under the Fourth Amendment subject only to a few specifically established and well delineated exceptions (*Minnesota v. Dickerson*, 508 U.S. 366, 372, (1993)).

The *Terry* court recognized one such exception when it held that where a police officer observes unusual conduct which leads him reasonably to conclude in light of his experience that criminal activity may be afoot the officer may briefly stop the suspicious person and make reasonable inquiries aimed at confirming or dispelling his suspicions.

But a police officer is not entitled to detain or search every person whom he sees on the street or of whom he makes inquiries. Before he does so, he must have constitutionally adequate, reasonable grounds for doing so. For example, in the case of the self-protective search for weapons, he must be able to point to particular facts from which he reasonably inferred that the individual was armed and dangerous (*Sibron v. New York*, 392 U.S. 40, 64 (1968)).

Reasonable and articulable suspicion is an objective standard. It focuses not on the police officer's actual state-of-mind, but on whether a reasonable person, having the information available to and known by the police, would have had that level of suspicion (*State v. Lipscomb*, 258 Conn. 68, 75 (2001)).

Courts have used a variety of terms to capture the elusive concept of what cause is sufficient to authorize police to stop a person, such as “articulable reasons” and “founded suspicion.” But such terms fall short of providing clear guidance for the factual situations that arise. But the essence is that the totality of the circumstances must be taken into account. Based upon that whole picture, the detaining officers must have a particularized and objective basis for suspecting the particular person stopped (*State v. Nash*, *United States v. Cortez*, 449 U.S. 411, 417 (1981)).

When engaging in a Fourth Amendment reasonableness inquiry, courts ask whether a person of reasonable caution knowing the facts available to the officer at the moment of the detention would believe that the action taken was appropriate (*United States v. Newton*, 369 F3d 659, 673-674 (2d Cir. cert denied 543 U.S. 947 (2004)). In the *Newton* case the court held that the seizure was not a de facto arrest under the Fourth Amendment when it lasted only a few minutes, occurred at a residence rather than the police station, and resulted from a reasonable suspicion that the suspect was armed and dangerous. To satisfy the reasonableness standard, officers conducting stops on less than probable cause must employ the least intrusive means reasonably available to carry out their legitimate investigative purposes. But the law recognizes the important need to allow authorities to graduate their responses to the demands of any particular situation (*State v. Nash*, 278 Conn. 620 (2006)).

Where an officer has a reasonable basis to think that the person stopped poses a present physical threat to the officer or others, the Fourth Amendment permits the officer to take necessary measures to neutralize the threat without converting a reasonable stop into a de facto arrest. This doctrine has supported a range of restraints incident to a stop, from the pat-down at issue in *Terry*, to the drawing of firearms, to the use of handcuffs (*State v. Nash*).

Similarly, requiring a suspect to accompany a police officer to another place does not necessarily transform what would otherwise be a permissible investigatory detention into an arrest (*State v. Nash*). In *State v. Mitchell* (204 Conn. 187, 199, cert denied 484 U.S. 927 (1987)), the court held that transporting the defendants to the hospital for viewing by the victim did not exceed the permissible scope of an investigatory detention (204 Conn. 187, 199, cert denied 484 U.S. 927 (1987)). (Also see *Florida v. Royer*, 460 U.S. 491, (1983) in which the Court stated that there are undoubtedly reasons of safety and security that would justify moving a suspect from one location to another during an investigatory detention.)

The Connecticut Supreme Court determined that handcuffing and removing the defendant to a secure location one-half block away from the gathering crowd does not, as a matter of law, exceed the permissible scope of an investigatory stop and protective pat down. But the court agreed with the defendant's position that the police may not bring him to the police station as part of an investigatory detention. The court concluded that it would not be within the narrow scope of a permissible investigatory stop to handcuff and transport a detainee to a police station solely for the purpose of interrogation (*State v. Nash*; *State v. Edwards*, 214 Conn. 57, 70-71 (1999)).

The *Nash* court also held that a full pat-down search of the defendant for weapons in the lobby of the police substation, to which the defendant had been transported following an investigatory stop, did not violate his rights under the Fourth Amendment.

## **STATE POLICE GUIDELINES**

William Blanchette, legislative liaison for the state police provided the following guidelines pertaining to investigative detentions. It comes from *2006 State Police Administration and Operations Manual*.

### **§19.1.2 Detaining Suspects and Other Persons**

#### **a. Troopers may temporarily detain a suspect without performing an arrest**

- (1) The U.S. Supreme Court has held that a trooper may stop a person to investigate behavior, which falls short of probable cause to arrest.
- (2) Constitutional law does not require a trooper who lacks the precise degree of information necessary for probable cause to ignore suspicious conduct.
- (3) However, no trooper or police officer shall stop, detain or search any person when such action is solely motivated by considerations of race, color, ethnicity, age, gender or sexual orientation and such action may constitute a violation of that person's civil rights (CGS § 54-11).

#### **b. Conducting a threshold inquiry: “Terry Stops”**

- (1) In *Terry v Ohio*, 392 U.S. 1, (1968), the U.S. Supreme Court decided that a police officer may briefly detain a person to determine a proper identity and to conduct a threshold inquiry.

a. *Terry* stops are allowed when articulated facts and circumstances lead a reasonable person to believe that criminal activity by a suspect has occurred or is about to occur.

b. During detention, if a trooper reasonably believes a person may be armed, the trooper may conduct a limited protective “frisk” or pat-down search for concealed weapons.

1. This search only encompasses the area within a suspect's span of control or immediate reach.

2. The purpose of the search is not to discover evidence, but to allow the trooper to investigate without risking personal injury.

c. If the trooper feels an object during the search, which may be a weapon, the trooper may withdraw the object and examine it.

d. If evidence of a crime or contraband is found during the course of a *Terry* search, that evidence is admissible in court.

(2) A trooper performing a stop and frisk must be able to articulate:

a. The basis for suspicion or reason to make the stop; and

b. Why, under the circumstances, the trooper was concerned for his or her personal safety.

**c. Permitted scope of a “*Terry*” search**

(1) The scope of a *Terry* search must be limited to the discovery and seizure of weapons.

(2) Do not conduct a general search for evidence as part of a *Terry* stop.

**d. Non-criminal detention**

(1) A trooper may briefly detain a person who is not a criminal suspect to protect the public or assist apprehension of a criminal.

a. When requested by a uniformed trooper, anyone operating a motor vehicle in Connecticut (CGS § 14-217) is required to provide or produce:

1. Name and address;

2. Name and address of the vehicle's owner;

3. Registration certificate;

4. Motor vehicle operator's license; and

5. Proof of insurance.

b. A trooper may order any or all occupants out of a motor vehicle stopped for a traffic violation.

c. A witness at a crime scene may be briefly detained to obtain a name and address or to make inquiries.

d. If a witness is not cooperative, attempt to identify the witness and approach him or her later.

(2) If it is necessary to arrest a witness to a crime to ensure appearance at a trial, an arrest warrant would normally be obtained before arrest (CGS § 54-82j).

**e. Handcuffing during investigative detention**

Troopers often find themselves involved in investigative detention situations that raise their level of awareness and alert them to particular officer safety issues.

These situations can sometimes dictate the necessity to temporarily restrain a subject, even though arrest may not be imminent. *State v. Braxton*, (196 Conn. 685 (1985)), permits the utilization of “temporary restraints”, in some narrowly defined situations.

(1) Occasions may arise during the course of an investigation where a trooper has grounds to believe that a suspect has committed an offense. Although he or she may not be under arrest at that time, they may need to be subsequently handcuffed or restrained to ensure the safety of the troopers or prevent the escape of a suspect.

(2) Troopers should be cautious when conducting these limited detentions as a prolonged detention, extensive use of force, police dominance, or movement of the subject could subsequently be viewed by the court as a de facto arrest.

(3) When making the decision to handcuff or restrain a suspect for the purpose of an investigation, troopers must weigh and consider several factors that may create a greater risk to their safety and an increased margin for the suspect's escape. These are known as “Officer / Subject Factors” and “Special Circumstances”.

a. “Officer / Subject Factors”:

1. Age – Trooper vs. Suspect
2. Size – Physical Stature
3. Sex
4. Multiple Subjects
5. Skill Level – Trooper's level of experience & tactical proficiency

b. “Special Circumstances”:

1. Imminent Danger – e.g. Highly Agitated Subject
2. Special Knowledge – e.g. Known Dangerous Felon
3. Fatigue / Injury
4. Proximity to Weapons

c. The weight and consideration given to each of the above factors may vary with individual troopers, however, as the application of handcuffs does constitute and extended use of force, any decision made must be considered reasonable under the given set of circumstances.

(4) Troopers shall obtain a case number for such instances that may not lead to arrests, but where subjects are lawfully detained for investigatory or safety purposes. These reports shall document in detail any and all uses of force, set forth

the exact situation at the time of the action, and articulate reasons he / she felt it was necessary to handcuff and detain an individual. This will outline a trooper's actions and possibly avoid any future scrutiny of them.

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