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Current through all Laws passed during the 2018 Legislative Session and Ballot Measures Approved in the November 2018 General Election

[Colorado Revised Statutes](#)   [TITLE 16. CRIMINAL PROCEEDINGS](#)   [CODE OF CRIMINAL PROCEDURE](#)   [ARTICLE 3. ARREST - SEARCHES AND SEIZURES](#)   [PART 1. AUTHORITY OF PEACE OFFICER TO MAKE AN ARREST](#)

### 16-3-103. Stopping of suspect

**(1)** A peace officer may stop any person who he reasonably suspects is committing, has committed, or is about to commit a crime and may require him to give his name and address, identification if available, and an explanation of his actions. A peace officer shall not require any person who is stopped pursuant to this section to produce or divulge such person's social security number. The stopping shall not constitute an arrest.

**(2)** When a peace officer has stopped a person for questioning pursuant to this section and reasonably suspects that his personal safety requires it, he may conduct a pat-down search of that person for weapons.

### History

**Source:**

L. 72: R&RE, p. 198, § 1. C.R.S. 1963: § 39-3-103. L. 83: (1) amended, p. 663, § 2, effective July 1. L. 2001: (1) amended, p. 941, § 9, effective July 1.

## ▼ Annotations

### Notes

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Cross references: For the stopping of persons suspected of alcohol- or drug-related traffic offenses, see § 42-4-1302.

### Case Notes

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#### **ANNOTATION**

Law reviews. For comment, "People v. Thomas: Furtive Gestures as an Element of Reasonable Suspicion -- The Ongoing Struggle to Determine a Standard", see 61 Den. L.J. 579 (1984). For article, "Criminal Procedure", which discusses a Tenth Circuit decision dealing with stops and arrests, see 62 Den. U.L. Rev. 165 (1985). For article, "A DUI Primer", see 16 Colo. Law. 2179 (1987).

Different standards govern full-scale arrest and investigatory stops. *People v. Severson*, 39 Colo. App. 95, 561 P.2d 373 (1977).

Limited, temporary detention permissible though no probable cause to arrest exists. A police officer may in appropriate circumstances and in an appropriate manner approach a person for purposes of investigation of possible criminal behavior even though there is no probable cause for arrest. *People v. Lucero*, 182 Colo. 39, 511 P.2d 468 (1973); *People v. Martineau*, 185 Colo. 194, 523 P.2d 126 (1974).

There is an area of proper police procedure in which an officer having less than probable cause to arrest may temporarily detain an individual for limited purposes. *People v. Marquez*, 183 Colo. 231, 516 P.2d 1134 (1973); *People v. Schreyer*, 640 P.2d 1147 (Colo. 1982).

A temporary police detention in the nature of "field investigation" can be justified by less than probable cause for arrest. *People v. Stevens*, 183 Colo. 399, 517 P.2d 1336 (1973).

Police officers may make a limited stop on less than probable cause. *People v. Montoya*, 185 Colo. 299, 524 P.2d 76 (1974).

In certain circumstances a police officer having less than probable cause to arrest may stop an individual for identification purposes and not violate the fourth amendment prohibition against unreasonable search and seizure. *People v. Mascarenas*, 726 P.2d 644 (Colo. 1986).

Where officer has a reasonable suspicion that an automobile temporary sticker has been altered, officer has authority to make a stop under this section since such alteration would constitute a misdemeanor traffic offense. *People v. Thomas*, 839 P.2d 1174 (Colo. 1992).

In order to lawfully detain an individual for questioning: (1) A police officer must have a reasonable suspicion that the individual has committed, or is about to commit, a crime; (2) the purpose of the detention must be reasonable; and (3) the character of the detention must be reasonable when considered in light of the purpose. *People v. Stevens*, 183 Colo. 399, 517 P.2d 1336 (1973); *People v. Montoya*, 185 Colo. 299, 524 P.2d 76 (1974); *People v. Mascarenas*, 726 P.2d 644 (Colo. 1986); *People v. Ratcliff*, 778 P.2d 1371 (Colo. 1989); *People v. Wilson*, 784 P.2d 325 (Colo. 1989); *People v. Sutherland*, 886 P.2d 681 (Colo. 1994); *People v. Rodriguez*, 924 P.2d 1100 (Colo. App. 1996), *aff'd*, 945 P.2d 1351 (Colo. 1997).

The first of these requirements is determined by whether there were specific and articulable facts known to the officer, which taken together with rational inferences from these facts, created a reasonable suspicion of criminal activity to justify the intrusion into the defendant's personal security. *People v. Mascarenas*, 726 P.2d 644 (Colo. 1986); *People v. Wilson*, 784 P.2d 325 (Colo. 1989).

Permissible purposes for investigatory stops. Investigatory stops constitute an intermediate response by the police between nondetention and arrest. These procedures are permissible only for the purpose of questioning a suspect, who might otherwise escape, regarding his identity or observed behavior in order temporarily to maintain the status quo while seeking to procure more information regarding possible wrongdoing. *People v. Severson*, 39 Colo. App. 95, 561 P.2d 373 (1977).

Police may detain and require identification if reasonable suspicion of criminal conduct. The police may detain and require identification of a person if they have a reasonable suspicion, based on objective facts, that the person is involved in criminal conduct. *People v. Archuleta*, 616 P.2d 977 (Colo. 1980).

The reasonableness of an officer's suspicion is determined from the totality of the circumstances in which the suspicion arose. *People v. Bell*, 698 P.2d 269 (Colo. 1985); *People v. Mascarenas*, 726 P.2d 644 (Colo. 1986); *People v. Coca*, 829 P.2d 385 (Colo. 1992).

Officer's suspicion that the defendants were connected to the reported criminal activity held reasonable given the defendants' evasive actions and their proximity to the location of the reported burglary shortly after the officer received the dispatch call. *People v. Mascarenas*, 726 P.2d 644 (Colo. 1986); *People v. Sosbe*, 789 P.2d 1113 (Colo. 1990).

Investigatory stops. A police officer, lacking probable cause to arrest, may stop a person for investigatory purposes if the officer has a reasonable suspicion that the person stopped is involved in criminal activity. *People v. Sosbe*, 789 P.2d 1113 (Colo. 1990).

An investigatory stop implicates a seizure that is based on less than probable cause and so it must be brief in duration, limited in scope, and narrow in purpose. *People v. Tottenhoff*, 691 P.2d 340 (Colo. 1984); *Outlaw v. People*, 17 P.3d 150 (Colo. 2001).

Construction of § 42-2-113 inconsistent with this section. A construction of § 42-2-113, which requires that drivers' licenses be displayed to peace officers upon demand, which would give to a police officer unlimited discretionary authority to stop any car at any time for any reason as long as he asked contemporaneously for display of a driver's license would be inconsistent with this section, which specifically limits an officer's authority to stop persons for investigation in the absence of probable cause to arrest. *People v. McPherson*, 191 Colo. 81, 550 P.2d 311 (1976).

Limited searches of a person for weapons during an investigative detention, when probable cause for arrest is lacking, is permissible, but there must be: (1) Some reason for the officer to confront the citizen in the first place; (2) something in the circumstances, including the citizen's reaction to the confrontation, must give the officer reason to suspect that the citizen may be armed and, thus, dangerous to the officer or others; and (3) the search must be limited to a frisk directed at discovery and appropriation of weapons and not at evidence in general. *People v. Martineau*, 185 Colo. 194, 523 P.2d 126 (1974); *People v. Shackelford*, 37 Colo. App. 317, 546 P.2d 964 (1976).

In determining the reasonableness of a search in the situation where the search is not full blown but is rather just a protective search for weapons, the inquiry is a dual one: (1) Was the officer's action justified at its inception; and (2) was the search reasonably related in scope to the circumstances which justified the interference in the first place. *People v. Burley*, 185 Colo. 224, 523 P.2d 981 (1974).

So long as the officer is entitled to make a forcible stop and has reason to believe that the suspect is armed and dangerous, he may conduct a weapons search limited in scope to this protective purpose. *People v. Burley*, 185 Colo. 224, 523 P.2d 981 (1974).

Protective search for weapons is justified only when circumstances of an otherwise valid stop provides the officer with a reasonable basis to suspect person stopped may be armed and dangerous. *People v. Ratcliff*, 778 P.2d 1371 (Colo. 1989); *People v. Sutherland*, 886 P.2d 681 (Colo. 1994).

Based not on hunches and limited in scope. In order to uphold the stop and frisk as reasonable, both the initial confrontation and the subsequent search

must have been prompted by the officers' reliance on particular facts, rather than on inarticulable hunches, and the scope of the frisk must be limited to that necessary for the discovery of weapons. *People v. Shackelford*, 37 Colo. App. 317, 546 P.2d 964 (1976).

Sufficient basis for weapons search to be excepted from warrant requirement. The reasonable apprehension of danger or injury to the police officers -- judged by objective standards -- provides a sufficient basis for a search to fall within the search for weapons exception to the fourth amendment's warrant requirement. *People v. Burley*, 185 Colo. 224, 523 P.2d 981 (1974).

Based on the totality of the circumstances, the trial court properly denied defendant's motion to suppress evidence obtained during a vehicle search. Trial court properly found that police officer had reasonable suspicion that defendant was engaged in drug trafficking sufficient to justify the investigatory stop. *People v. Ramirez*, 1 P.3d 233 (Colo. App. 1999).

Even if seizure of person is unconstitutional, evidence abandoned prior to that seizure is not the fruit of the seizure and should not be suppressed. *People v. McClain*, 149 P.3d 787 (Colo. 2007).

Even if the totality of police officers' conduct rose to the level of a show of authority to constitute a seizure, evidence abandoned prior to the seizure cannot be suppressed. *People v. McClain*, 149 P.3d 787 (Colo. 2007).

Reasonable grounds to fear suspect armed. Where the arresting officers stopped defendant because he matched description of a suspect who had allegedly committed an act of violence, these circumstances constituted reasonable grounds to fear that the suspect might well be armed, and thus, be potentially dangerous. The officers therefore acted properly in initiating a pat-down search for weapons. *People v. Shackelford*, 37 Colo. App. 317, 546 P.2d 964 (1976).

Doctrine of allowing investigative stops based upon "reasonable cause" was extended to include information supplied by informants' tips as well as the personal observations of police officers. *People v. Lucero*, 182 Colo. 39, 511 P.2d 468 (1973).

Stop, search, and seizure of evidence reasonable and justified under circumstances even though conduct was compatible with innocent activity. Informant told police there were three males in the area and that one was wearing a poncho and possibly carrying a rifle. When officers spotted three males, one wearing a poncho, they stopped them for questioning. *People v. D.F.*, 933 P.2d 9 (Colo. 1997).

Officers do not have to observe criminal conduct to corroborate anonymous tip. *People v. D.F.*, 933 P.2d 9 (Colo. 1997).

The record revealed no circumstances which could legitimate the stopping of defendant's vehicle as a temporary detention within the contemplation of this section, where the officers had never seen or heard of defendant before, did not even know if drug trafficking actually had taken place in the house under surveillance, and had no reason to believe the sack defendant carried contained drugs, and where defendant did not violate any traffic laws as he drove away. *People v. McPherson*, 191 Colo. 81, 550 P.2d 311 (1976).

Stopping of defendant held not arrest but proper temporary detention in nature of field investigation. *People v. Cruz*, 186 Colo. 295, 526 P.2d 1315 (1974).

Detention held a full-scale arrest. *People v. Severson*, 39 Colo. App. 95, 561 P.2d 373 (1977).

Discovery of evidence of crime while searching for weapons. Where the search was limited to a frisk directed at the discovery and appropriation of weapons, and not to uncover evidence as such, evidence of a crime having thus been lawfully uncovered, it is competent and admissible in evidence as relevant proof of the charges of which defendant is accused. *People v. Martineau*, 185 Colo. 194, 523 P.2d 126 (1974).

Where police officer obtained probable cause to search a vehicle and seize evidence in the process of making a lawful stop for threshold investigatory purposes, the defendant's motion to suppress this evidence was properly denied. *People v. Lucero*, 182 Colo. 39, 511 P.2d 468 (1973).

Police officers are entitled to conduct an investigatory stop of a motorist if they have reasonable suspicion that the motorist has committed a traffic violation. Because the defendant had committed a traffic violation and that offense alone was sufficient to justify the police encounter, the trial court did not err in denying the defendant's motion to suppress. *People v. Valencia-Alvarez*, 101 P.3d 1112 (Colo. App. 2004).

Trial court improperly suppressed the evidence police obtained after conducting an investigatory stop of the defendant. The police had a reasonable, articulable suspicion to conduct an investigatory stop of the defendant because of ongoing criminal activity. *People v. Reyes-Valenzuela*, 2017 CO 31, 392 P.3d 520.

Discovery of evidence of crime while responding to taxicab driver's plea. Where the search was the result of police responding to the plea of a taxicab driver who thought he was about to be robbed, but the search revealed that the defendant, who was the passenger, was in possession of narcotics, the defendant's motion to suppress was properly denied. *People v. McNeal*, 191 Colo. 490, 553 P.2d 757 (1976).

Seizure of heroin under plain-view doctrine held proper. Where police officer, who had legitimately stopped defendant, observed what he believed to be heroin in plain view on seat of automobile which defendant had just exited, he

could seize the heroin under the "plain-view doctrine". *People v. Montoya*, 185 Colo. 299, 524 P.2d 76 (1974).

Trial court properly suppressed evidence seized during search of defendant when fact that defendant ran in opposite direction from companions did not satisfy constitutional requirement of reasonable suspicion for investigatory stop and scope of resulting search exceeded a pat down for weapons. *People v. Wilson*, 784 P.2d 325 (Colo. 1989).

There was no probable cause to stop defendant's vehicle where the officer observed a crack in the windshield but could not recall the severity or position of the crack and did not issue a citation for the crack. Evidence that defendant was driving on a suspended license obtained as a result of the unwarranted stop was therefore suppressed. *People v. Cerda*, 819 P.2d 502 (Colo. 1991).

Trial court properly denied motion to suppress statements made by the defendant between the time he was detained and the time he was actually placed under arrest. The record supported a finding that the defendant was not in custody at the time he was detained as part of a proper investigatory stop, but that he was placed in custody after the arresting officer had probable cause for the arrest based on identification of the defendant by the victim and the finding of an outstanding warrant for the defendant's arrest. *People v. Young*, 923 P.2d 145 (Colo. App. 1995).

Following *Arizona v. Gant*, 556 U.S. 332, 129 S. Ct. 1710, 173 L. Ed. 2d 485 (2009), the search incident to arrest exception does not apply in this case, and the search of the passenger compartment of defendant's car was unconstitutional. Because statements defendant made following the discovery of drugs were the fruit of the unlawful search, the evidentiary use of the statements must also be suppressed. *Perez v. People*, 231 P.3d 957 (Colo. 2010).

Applied in

*People v. Taylor*, 190 Colo. 144, 544 P.2d 392 (1975); *People v. Derrera*, 40 Colo. App. 86, 570 P.2d 558 (1977).



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