



POLICY & PROCEDURES

HOLMEN POLICE DEPARTMENT

SUBJECT: **STOP & FRISK**

NUMBER: 1.13

SCOPE: ALL DEPARTMENT PERSONEL

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PURPOSE

The purpose of this policy is to identify the mandate for stop and frisk situations and provide guidelines to officers to properly formulate "reasonable suspicion" for a stop and "reasonable fear" for a frisk.

POLICY

The statutory provisions behind this policy are State Statutes 968.24 and 968.25. In Wisconsin, reasonable suspicion is sufficient grounds for stopping and questioning a person suspected of committing, having committed or about to commit a crime. The following policy covers the departmental guidelines for stop and frisk activities.

DISCUSSION

All law enforcement officers should be familiar with the term "Stop and Frisk," and that a proper "stop" will not automatically authorize a "frisk." Officers must be able to articulate the "reasonable suspicion" required for a "stop" independently and separately from the "reasonable fear" required for a "frisk."

DEFINITIONS

"Reasonable suspicion" is more than a vague hunch and less than probable cause.

I. PROCEDURE

A. The Stop

1. Under the statute, there are six (6) rules for the stop:
 - a. It must occur in a public place. This includes a person's car if on the street, but a person's backyard or home or his/her host's backyard or homes are not public places.
 - b. The officer must identify himself/herself as a law enforcement officer.
 - c. The officer must reasonably suspect the person is committing, has committed or is about to commit a crime. This quantum is not the same as probable cause to arrest; it is less than that, but more than "mere suspicion." A person loitering in a high crime area late at night or jogging near a building site already burglarized might, in view of the officer's experience, produce reasonable suspicion. The U. S. Supreme Court in 1972 said that the tip of an untested informant, while not giving reasonable grounds for arrest, would give reasonable suspicion for a stop and frisk.
 - d. The officer may demand the person's name and address and an explanation of his/her conduct. However, if the person states, "I do not wish to say anything to you, even identify myself," and causes no trouble at all, and there is no further information or facts which could lead the

officer to “probable cause,” the officer must allow the person to go on his/her way. Refusal to answer an officer’s questions in itself is not “obstructing an officer.”

- e. The temporary detention for questions must be in the vicinity of the initial stop. It may, for example, be out of the rain, but not at the police department six miles away.
- f. The questioning may only be for a reasonable length of time. This will vary in different circumstances, but will include enough time to call in a stolen car inquiry or identity check.

Wisconsin courts have held that mere flight from the presence of the police is sufficient grounds for formulating a reasonable suspicion necessary for an investigatory stop. Also, if necessary, the police may use force to compel a reasonable suspicion-investigatory stop.

Under the statute, the stop must occur in a “public place.” No definition of a “public place” is given and the court has not yet clarified the phrase. If the officer sees suspicious activity at a time at which the officer himself/herself is in a public place, the requirement is probably satisfied. An officer on patrol at 3:00 a.m. might see a person attempting to enter a house through a side window. After questioning, it is revealed that the person is the owner of the house and has lost his/her keys. The “stop” has thus occurred on this person’s private property. The officer, however, either from his/her care in the public road or on foot on the public sidewalk has, from a “public place” viewed suspicious activity and is perfectly justified in further investigation. It is reasonable to assume that “public place” refers to a place accessible without breaking and entering.

B. The Frisk

- 1. For a frisk to be warranted after a person has been stopped, the officer must reasonably suspect that he/she or another is in danger of physical injury from that person.
- 2. The officer is entitled to conduct a “limited” search for weapons or objects which might be used as weapons. This means a pat-down of the person’s outer clothing and nothing more, unless an object is felt which might be a weapon.
- 3. The frisk may not be used as an excuse to search for evidence.
- 4. An officer may seize an object during a frisk that is not suspected to be a weapon if the officer is experienced and trained in narcotic detection and enforcement and, based on that experience, can ascertain that the object felt is a controlled substance.
- 5. If the officer finds a weapon or dangerous instrument, it may be taken. Upon completion of the stop, it may be returned if its possession is legal unless, upon probable cause, he/she decides to arrest. If he/she finds contraband, it may be seized and may constitute grounds for valid arrest. Once there is an arrest, a complete search incident to arrest may be made.

Chief of Police
Shane Collins