

USLegal Guide to Unlawful Detention



INTRODUCTION

Unlawful detention means keeping in custody unlawfully. Under criminal law it means keeping or confining a person in custody without any lawful reason. Detention is a short period of custody, often occurring while the police are deciding whether or not to arrest you. In order to detain you, the police are supposed to have a reasonable suspicion that you're involved in a crime. During a detention, the police are entitled to pat the outer surface of your clothing, to check for guns, knives or other weapons. If you're detained while driving, the officers can look inside the car for weapons (but not in the trunk). A detention search is conducted only to ensure that the detainee has no weapon.

STOP AND FRISK

Stop and frisk is when police temporarily

detain somebody and pat down their outer clothing when there are specific articulable facts leading a reasonable police officer to believe a person is armed and dangerous. It is not necessary for the officer to articulate or identify a specific crime they think is being committed, only that a set of factual circumstances exist that would lead a reasonable officer to have a reasonable suspicion that criminal activity is occurring. Reasonable suspicion is one step below probable cause and one step above a hunch. Reasonable suspicion has been defined by the U.S. Supreme Court as "the sort of common-sense conclusion about human behavior upon which practical people . . . are entitled to rely." Further, it has defined reasonable suspicion as requiring only something more than an "unarticulated hunch." It requires facts or circumstances that give rise to more than a bare, imaginary, or purely conjectural suspicion.

A "frisk" by definition is a type of search that requires a lawful stop. It is best thought of as a

separate act, but in practice, a suspect who refuses to answer questions in a stop may be providing the officer with sufficient justification to frisk. A frisk should not be for anything other than a dangerous weapon or contraband. However, if other evidence, like a suspected drug container, is felt, it can be seized by the officer under the "plain feel" doctrine. The test for plain feel is that the item's contraband nature be "immediately apparent".

A "Terry Stop" is a stop of a person by law enforcement officers based upon "reasonable suspicion" that a person may have been engaged in criminal activity, whereas an arrest requires "probable cause" that a suspect committed a criminal offense. The name comes from the standards established in a 1968 case, Terry v. Ohio.

The issue in the case was whether police should be able to detain a person and subject him to a limited search for weapons without probable cause for

arrest. The Court held that police may conduct a limited search of a person for weapons that could endanger the officer or those nearby, even in the absence of probable cause for arrest and any weapons seized may be introduced in evidence.

When a police officer observes unusual conduct which leads him or her to reasonably suspect criminal activity may be occurring and that the persons with whom he is dealing may be armed and presently dangerous, the officer might approach and briefly detain the subjects for the purpose of conducting a limited investigation. The officer must identify himself or herself as a police officer and may make reasonable inquiries. If after initial investigation the officer still has a reasonable fear for the safety of himself and others, the officer may conduct a carefully limited search of the outer clothing in an attempt to discover weapons that might be used to assault him or her.

VEHICLE STOPS

Automobiles may be stopped if an officer has a reasonable and articulable suspicion that the motorist has violated a traffic law. One exception to the Fourth Amendments warrant requirement is that, incident to a lawful arrest, police may search an arrestee and the area immediately surrounding him. Such a search must be contemporaneous with the arrest, conducted to prevent the seizure of a weapon or the destruction of evidence, and limited to an area within the arrestees control. Police may conduct warrantless searches of vehicles and any containers within which are likely to contain what they are looking for whenever police have probable cause to believe that contraband or evidence will be found in the vehicle.

Once the vehicle has pulled to the side of the road, the Fourth Amendment permits the officer to search the vehicle's interior, including the glove compartment. However, the trunk of a vehicle cannot be searched unless the officer has

probable cause to believe that it contains contraband or the instrumentalities of criminal activity. Like a search incident to arrest, once a vehicle has been lawfully impounded, its contents may be inventoried without a warrant, including the contents of the trunk.

Traffic stops based on reasonable suspicion are investigatory stops under Terry v. Ohio. Stops based on reasonable suspicion may be likely to be challenged by a defendant than stops based on probable cause.

Some of the most common ways allowed for officers to search/frisk a vehicle without a search warrant include:

- Abandoned Vehicles.
- Plain View.
- Consent.
- Inspection.
- Search During Temporary Questioning.
- Incident to Arrest.
- Probable Cause.
- Inventory Searches.

For an officer to search a vehicle with the consent of the person in control of the vehicle, the consent must be

voluntarily, freely, and knowingly given. To prove voluntary consent, the consent must be unequivocal and specific, and freely and knowingly given. Consent must be given without duress or coercion, express or implied.

A traffic officer, or person authorized to enforce non-moving traffic violations may use reasonable means to gain access to a vehicle if that vehicle's identification number cannot be read, such as where the identification number has been removed, altered, or obliterated or made impossible to read.

A vehicle may be searched during temporary questioning, when certain articulable facts are present. In order to justify a protective sweep of a vehicle, an officer must have a reasonable fear that he/she is in danger. For example, in one case, when officers approached a vehicle during an investigation of possible drug dealing, and the driver's hand was hidden from view, the officer was found justified in conducting a

protective search of the passenger compartment, since the suspect may have dropped a weapon in the car that would present a danger to the officers

Some of the factors that may be considered in justifying a protective sweep of a vehicle, among others, include:

- Reason for the stop
- Furtive movement by the driver and whether the officer sought any explanations of such movements
- Officer to subject ratios
- Whether the officer intended to let the driver return to the vehicle after the encounter was over or the officer intended to eventually arrest the driver.
- Number of persons in the stopped vehicle.
- The time of day or night and the lighting conditions.
- The position of the squad car and the other vehicle and were the officers in a particularly vulnerable position in relation to the person or persons in the car.
- Odd or unusual behavior by the driver.
- Whether the driver or passenger(s) attempted to flee

- Unusual indications of nervousness by occupants of the vehicle
- Indications of alcohol or drugs.
- Whether the area is a high crime area.