



County of Fairfax, Virginia

MEMORANDUM

DATE: 05/26/2020

TO: Colonel Edwin C. Roessler Jr.
Chief of Police

Major Matt Owens
Commander - Internal Affairs Bureau

FROM: Richard G. Schott
Independent Police Auditor

SUBJECT: Policy Change Recommendations

Unrelated to any individual incident investigation review, I have reviewed General Order 603.4 POLICE CITIZEN CONTACT, and recommend the following policy changes for your consideration:

G.O. 603.4 II. POLICY

¶ 3

Except as provided below, officers shall not consider race/ethnicity in establishing either reasonable suspicion or probable cause. Similarly, except as provided below, officers shall not consider race/ethnicity in deciding to initiate even those **non** consensual encounters that do not amount to legal detentions or to requests for consent to search.

REASON: The provision is clearly meant to apply to “even those **consensual** encounters that do not amount to legal detentions.”

G.O. 603.4 III. DEFINITIONS

C. Reasonable Suspicion: Facts and circumstances which, taken together with rational inferences therefrom, would cause an officer to reasonably suspect that: a person:

1. (To "stop") ... a person is, has been, or is about to be, involved in criminal activity;
2. (To "frisk") ... a person may be armed and constitute a danger to the officer or other person; and
3. (To "frisk" or "search" other areas) ... the area within immediate control and access of a person which may contain weapons and that the person may use those weapons against the officer.

REASON: To distinguish that sub ¶ 3 starts with a reasonable suspicion of the area rather than a person.

G.O. 603.4 IV. VOLUNTARY FIELD CONTACTS

A. Initiating Voluntary Field Contacts

4. Voluntary field contacts may be initiated any place where an officer has a legitimate right to be and generally include:
 - c. Places to which an officer has been admitted with the consent of a the person empowered to give such consent.

REASON: To recognize that there are often multiple people who may provide lawful consent to an officer to be present in a location.

G.O. 603.4 IV. VOLUNTARY FIELD CONTACTS

B. Conducting Voluntary Field Contacts

Officers conducting voluntary field contacts shall consider the following factors that are relevant in determining whether a particular encounter between police and citizens is consensual or a Fourth Amendment seizure:

3. Advising Citizens They Have the Right to Refuse – Officers should advise citizens they have a right to refuse to consent to a search or frisk, or to answer questions, or accompany officers to a different location. This helps keep the contact voluntary. When appropriate, officers shall advise citizens why they have been contacted stopped.

REASON: To be consistent with the entirety of G.O. 603.4 IV. and to emphasize that an individual involved in a voluntary field contact has not been “stopped.”

G.O. 603.4 V. INVESTIGATIVE STOP, FRISK AND SEARCH BEYOND THE PERSON

- ¶ 1 A law enforcement officer may temporarily detain a person in a public place if the officer has reasonable suspicion exists that a crime has been committed, is being committed, or is about to be committed that the person has committed a crime, is committing a crime, or is about to commit a crime;

REASON: To make clear that the reasonable suspicion is specific to the individual being detained, and that you cannot automatically detain everyone in an area simply because there is reasonable suspicion that a crime occurred, is occurring, or is about to occur there.

G.O. 603.4 V. INVESTIGATIVE STOP, FRISK AND SEARCH BEYOND THE PERSON

- A. Investigative Stop – The temporary detention of a subject when the officer has reasonable suspicion that criminal activity has occurred, is occurring, or is about to occur.

The courts have ruled that the following factors may be considered in building a foundation to stop a person:

4. The appearance of a person is similar to the description given in a lookout for a known offense.

REASON: Grammatical edit only.

G.O. 603.4 V. INVESTIGATIVE STOP, FRISK AND SEARCH BEYOND THE PERSON

- B. Frisk – If an officer reasonably **suspects** **believes** that a person may be armed and constitutes a danger to the officer or other person, the officer may conduct a limited search of the person's outer clothing. The courts have held that, in the case where the subject was wearing a heavy overcoat, the officer **acted properly** ~~was proper~~ in having the subject remove the coat so that the subject **could** ~~may~~ be patted down.

REASON: To make the reasonable suspicion standard consistent throughout the G.O., and specifically with G.O. 603.4 III. C. 2.

G.O. 603.4 V. INVESTIGATIVE STOP, FRISK AND SEARCH BEYOND THE PERSON

- E. Use of Force in Investigative Stops – Generally, officers may use the force reasonably necessary, such as moderate pressure to stop, turn or guide a subject during an investigative stop. Courts have permitted the following types of force in stopping a person, when the force was reasonable on the basis of the circumstances in each case:

1. Blocking a suspect's vehicle with a police cruiser.
2. Pointing the service weapon at a suspect for the officer's protection.
3. Making the suspect lie on the ground.
4. Ordering a suspect or other occupant out of a vehicle.
5. Handcuffing a suspect for the officer's protection.

In the five examples above, the courts have considered the reasonableness of the officer's actions **in** **under** confrontational situations. All deal with officer safety issues. Officers using force in an investigative stop for officer safety reasons must be prepared to articulate why their actions were reasonable under the circumstances.

REASON: Grammatical edit only.

GENERAL ORDER
FAIRFAX COUNTY POLICE DEPARTMENT



SUBJECT: POLICE CITIZEN CONTACT	NUMBER: 603.4
CANCELS ORDER DATED: 1-1-13	ISSUE DATE: 1-27-17

I. PURPOSE

The purpose of this General Order is to establish guidelines regarding voluntary field contacts, investigative stops, frisks and protective searches which extend beyond the person during a lawful investigative stop. Guidelines are also provided for the investigative stopping of vehicles and road check procedures.

II. POLICY

It is the policy of the Fairfax County Police Department to conduct voluntary field contacts, investigative stops, frisks, and searches necessary to accomplish lawful objectives and only to the extent reasonably necessary. Documentation of these contacts shall be initiated and maintained for the purposes of suspect, witness, or victim identification, intelligence gathering, crime prevention and crime analysis.

Investigative detentions, traffic stops, arrests, searches, and property seizures by officers will be based on a standard of reasonable suspicion or probable cause in accordance with the Fourth Amendment of the U.S. Constitution. Officers must be able to articulate specific facts and circumstances that support reasonable suspicion or probable cause for investigative detentions, traffic stops, arrests, nonconsensual searches, and property seizures.

Except as provided below, officers shall not consider race/ethnicity in establishing either reasonable suspicion or probable cause. Similarly, except as provided below, officers shall not consider race/ethnicity in deciding to initiate even those nonconsensual encounters that do not amount to legal detentions or to request consent to search.

Officers may take into account the reported race or ethnicity of a specific suspect or suspects based on trustworthy, locally relevant information that links a person or persons of a specific race/ethnicity to a particular unlawful incident(s). Race/ethnicity can never be used as the sole basis for probable cause or reasonable suspicion.

Except as provided above, race/ethnicity shall not be motivating factors in making law enforcement decisions.

When conducting traffic stops, officers shall, during their initial contact or at the earliest practical time, advise the operator why they have been stopped.

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During the course of their normal duties, police officers are sometimes subjected to obscene gestures, name calling, or harsh or rude language from citizens. Generally, these types of communications are protected by the First Amendment and cannot be used as the sole basis for criminal prosecution. This does not imply that officers cannot arrest a person under the provisions of Curse and Abuse, §18.2-416 of the *Code of Virginia*. The Supreme Court defined “fighting words” as “...those words which-by their very utterance inflict injury or tend to incite an immediate breach of the peace.” Federal and State court decisions reveal four generally accepted principles that can assist officers in deciding whether to arrest for speech directed to them.

- Direct threats to officer safety generally constitute “fighting words” and are not constitutionally protected.
- Speech which clearly disrupts or hinders officers in the performance of duty is not constitutionally protected.
- Obscene gestures, name calling, harsh or rude language not directed at officers or any other person, generally is protected speech under the First Amendment and does not, standing alone, constitute a crime.
- The Supreme Court has determined that professional law enforcement officers are expected to exercise greater restraint in their response to “fighting words” than the average citizen.

III. DEFINITIONS

- A. Voluntary Field Contact: When officers approach a person to talk and ask questions or ask a person for identification.
- B. Investigative Stop: Temporary detention of a subject when the officer has reasonable suspicion that criminal activity has occurred, is occurring, or is about to occur.
- C. Reasonable Suspicion: Facts and circumstances which, taken together with rational inferences therefrom, would cause an officer to reasonably suspect that a person:
 1. (To "stop") ... is, has been, or is about to be, involved in criminal activity;

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- 2. (To "frisk") ... may be armed and constitute a danger to the officer or other person; and
- 3. (To "frisk" or "search" other areas) ... the area within immediate control and access of a person which may contain weapons and that the person may use those weapons against the officer.
- D. Probable Cause: Facts and circumstances which, taken together with rational inferences therefrom, would lead a prudent person to believe:
 - 1. (To arrest) ... that a crime is being or has been committed and that a particular person committed it; or
 - 2. (To search) ... that evidence of a crime or contraband is in the place to be searched.
- E. Frisk: The "pat-down" of a person's outer clothing for a weapon.

IV. VOLUNTARY FIELD CONTACTS

- A. Initiating Voluntary Field Contacts
 - 1. Field contacts may be initiated when an officer wants to approach someone to talk or to ask a person for identification.
 - 2. Officers do not violate an individual's Fourth Amendment rights if they merely approach a person and ask if that person is willing to answer some questions, or if they put questions to a person who is willing to listen. An individual's voluntary answers to such questions may be offered in evidence in a criminal prosecution.
 - 3. The key to keeping a voluntary field contact from becoming an investigative stop is that the person does not have to answer any questions and may leave at any time.
 - 4. Voluntary field contacts may be initiated any place where an officer has a legitimate right to be and generally include:
 - a. County owned or controlled property normally open to members of the public.

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- b. Areas intended for public use or normally exposed to public view.
- c. Places to which an officer has been admitted with the consent of the person empowered to give such consent.
- d. Places where circumstances require immediate law enforcement presence to protect life or property.
- e. Areas where an officer may be admitted pursuant to a lawful arrest or search warrant.
- f. Any other areas in which an officer may effect a warrantless arrest.

B. Conducting Voluntary Field Contacts

Officers conducting voluntary field contacts shall consider the following factors that are relevant in determining whether a particular encounter between police and citizens is consensual or a Fourth Amendment seizure:

1. Physical Contact - The slightest application of physical force for the purpose of stopping or holding a person is likely to constitute a seizure. Officers shall not use force until they have established reasonable suspicion to justify an investigative stop.
2. Display of Weapons - The display of weapons is inherently coercive and is generally interpreted by citizens as compelling compliance. Thus, pointing firearms or threatening their use will, in most cases, transform the voluntary field contact into an investigative stop.
3. Advising Citizens They Have the Right to Refuse - Officers should advise citizens they have a right to refuse to consent to a search or frisk, or to answer questions, or accompany officers to a different location. This helps keep the contact voluntary. When appropriate, officers shall advise citizens why they have been stopped.
4. Movement From the Initial Site of the Contact - Officers should avoid moving from the initial site of the contact to another location unless there are articulable safety or security reasons. If the officer

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moves from the initial contact location, officers should document that the citizen had a choice to leave and voluntarily agreed to the movement.

5. Interfere With Freedom of Movement - The manner in which officers position themselves or their vehicles and the extent to which they block a citizen's pathway or freedom of movement may communicate to the citizen that they are not free to leave. Officers should position themselves in a manner to allow a path of egress for the citizen.
6. Number of Officers - A number of officers surrounding a citizen may communicate that the citizen is not free to leave. Thus, where officer safety is not jeopardized, an encounter is more likely to be deemed consensual if the backup officers stay in the background.
7. Demeanor and Appearance - An officer's use of coercive or intimidating language may be interpreted by a citizen as compelling compliance. Requests for a consent to frisk or search should be conveyed in a manner that the citizen has a choice and that compliance is not required.
8. Retention of Personal Property - Although officers may request to examine a person's identification and ask questions about any discrepancies, such property should be promptly returned. Prolonged retention of identification may transform the contact into a stop.
9. Mobile Automated Fingerprint Identification System (AFIS) Query – Mobile AFIS devices perform rapid precursory searches of automated fingerprint files accessible through the Northern Virginia Regional Identification System (NOVARIS), and may be a useful tool in verifying the identity of a person. Consent should be obtained from a citizen prior to conducting a mobile AFIS query during a voluntary field contact.

V. INVESTIGATIVE STOP, FRISK AND SEARCH BEYOND THE PERSON

A law enforcement officer may temporarily detain a person in a public place if reasonable suspicion exists that a crime has been committed, is being committed, or is about to be committed; or the officer reasonably suspects that a

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person is illegally carrying a concealed weapon in violation of *Code of Virginia* § 18.2-308. The United States Supreme Court ruled in the 1968 case of Terry v. Ohio, 392, U. S. 1, that a temporary detention is a seizure under the Fourth Amendment. The Court recognized that police officers must be able to take action when probable cause to arrest does not exist.

The Virginia Supreme Court supported the necessity of an investigative stop in a 1977 case, Simmons v. Commonwealth, 231 S. E. 2D, 218, when it stated:

"The Fourth Amendment does not require police officers who lack the precise level of information necessary for probable cause to arrest to simply shrug their shoulders and allow a crime to occur or a criminal to escape. On the contrary, Terry recognizes that it may be the essence of good police work to adopt an intermediate response. A brief stop of a suspicious individual in order to determine identity or to maintain the status quo momentarily while obtaining more information may be reasonable in light of the facts."

- A. Investigative Stop - The temporary detention of a subject when the officer has reasonable suspicion that criminal activity has occurred, is occurring, or is about to occur.

The courts have ruled that the following factors may be considered in building a foundation to stop a person:

1. The officer has valid knowledge that a person has a prior felony record.
2. A person fits the description of a wanted notice.
3. A person has exhibited furtive conduct such as attempting to conceal an object from the officer's view, or reaching under the seat of a car.
4. The appearance of a person is similar to description given in a lookout for a known offense.
5. A person exhibits unusual behavior, such as staggering or appearing to be in need of medical attention.

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6. The area and time of day, such as a person observed in a public area which has a history of recurring crime during the same time period as the time of the stop.
 7. Hearsay information is acceptable. The use of hearsay information is dependent upon both the content of information possessed by officers and its degree of reliability. Officers must corroborate some of the information provided by citizens or from anonymous tips when developing reasonable suspicion to conduct an investigative stop.
- B. Frisk - If an officer reasonably believes that a person may be armed and constitutes a danger to the officer or other person, the officer may conduct a limited search of the person's outer clothing. The courts have held that, in the case where the subject was wearing a heavy overcoat, the officer was proper in having the subject remove the coat so that the subject may be patted down.
- C. Search Beyond The Person - The United States Supreme Court held in Michigan v. Long, (1983) that although Terry V. Ohio involved the stop and subsequent pat-down search for weapons of a person suspected of criminal activity, it did not restrict the protective search to the person of the detained suspect. The Court recognized that protection of police and others can justify protective searches when there exists reasonable suspicion that the suspect poses a danger. Thus, an officer can search an area within the person's reach where a weapon may be found. A lawful protective search for weapons, which extends to an area beyond the person in the absence of probable cause to arrest, must have all of the following elements present:
1. A lawful investigative stop of a person or vehicle.
 2. Reasonable suspicion that the suspect poses a danger, as defined by the Court in Michigan v. Long:

"... specific and articulable facts, which taken together with the rational inferences from those facts, reasonably warrant the officer to believe that the suspect is dangerous and the suspect may gain immediate control of weapons."
 3. The search must be limited to those areas in which a weapon may be placed or hidden.

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4. The search must be limited to an area which would ensure that there are not weapons within the subject's immediate grasp.

The Court added in Michigan v. Long that although the subject was under the control of two officers during the investigative stop, it did not render unreasonable a belief that the subject could injure them.

- D. Period of Detention - Courts have generally held that the period of detention is a brief intrusion upon a person's movement. Once the detaining officer determines that the basis for reasonable suspicion no longer exists, the person detained should be immediately released.

Reasonable suspicion should be reinforced with diligent, active investigation. Should the investigation reveal additional information which strengthens reasonable suspicion, the detention period may be continued. If probable cause does not develop in a reasonable time period, the officer should immediately release the person.

- E. Use of Force in Investigative Stops - Generally, officers may use the force reasonably necessary, such as moderate pressure to stop, turn or guide a subject during an investigative stop. Courts have permitted the following types of force in stopping a person, when the force was reasonable on the basis of the circumstances in each case:

1. Blocking a suspect's vehicle with a police cruiser.
2. Pointing the service weapon at a suspect for the officer's protection.
3. Making the suspect lie on the ground.
4. Ordering a suspect or other occupant out of a vehicle.
5. Handcuffing a suspect for the officer's protection.

In the five examples above, the courts have considered the reasonableness of the officer's actions under confrontational situations. All deal with officer safety issues. Officers using force in an investigative stop for officer safety reasons must be prepared to articulate why their actions were reasonable under the circumstances.

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VI. RECORDING THE VOLUNTARY FIELD CONTACT, INVESTIGATIVE STOPS, FRISKS, AND MAINTENANCE OF RECORDS

Information obtained as a result of conducting a field contact or investigative stop can be fully utilized only if the information is properly entered and available for analysis through the Department's record management system. The availability of this information allows greater efficiency in crime analysis and criminal investigation and also serves to ensure the proper exercise of law enforcement authority, as well as enhancing an officer's ability to reconstruct, at a later time, events surrounding the field contact or investigative stop.

A. Field Contact Module

The I/LEADS Field Contact Module shall be the primary method for recording voluntary field contacts, investigative stops, and frisk incidents which do not result in an incident report. The Field Contact Module, shall be completed in accordance with instructions provided in the Department's Report Writing Manual, Section II, Chapter 10, and in compliance with the following:

1. Officers conducting a voluntary field contact shall record pertinent data and complete the Field Contact Module.
2. Officers conducting an investigative stop which does not result in an incident report shall record pertinent data and complete the Field Contact Module.
3. Officers shall initiate an incident report, in lieu of the Field Contact Module, whenever force is used to conduct an investigative stop of a person.

B. Review of Field Contact Records.

Field contacts shall be entered into I/LEADS at the end of each tour of duty. All field contact records shall be approved by a supervisor.

VII. LEGAL REFERENCES

- Terry v. Ohio, 392, U. S. 1 (1968)
Simmons v. Commonwealth, 231 S. E. 2D, 218 (1977)
Michigan v. Long, 463 U.S. 1032 (1983)

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VIII. ACCREDITATION STANDARDS REFERENCE

VLEPSC

ADM.

02.02

02.03

02.05

11.01

CALEA

1.2.3

1.2.9

1.2.4

74.3.1

1.2.5

This General Order becomes effective January 21, 2017, and rescinds all previous rules and regulations pertaining to the subject.

ISSUED BY:

APPROVED BY:

Chief of Police

County Executive