

 <p>Cambridge Police Department</p>	POLICY & PROCEDURES		No. 424.1
	Subject/Title: Stop, Frisk, & Threshold Inquiries		
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I. PURPOSE:

The purpose of this directive is to establish the parameters under which a police officer may stop and detain an individual for investigative purposes. The courts continually strive to reach the appropriate balance between the legitimate needs of police to perform essential investigative and public safety functions against the rights of individuals to be free from undue interference. Officers should be mindful that this area of the law is highly fact specific, and should make every effort to stay abreast of new developments in the case law.

II. POLICY:

All members of this police department shall operate within the parameters of established case law when conducting investigatory stops and patfrisks, to strike the correct balance between the legitimate needs of law enforcement and the constitutionally guaranteed individual protections, rights, and freedoms. Toward that end, officers may conduct investigatory stops under the following circumstances:

1. An officer with reasonable suspicion of criminal activity may temporarily stop and detain a person or vehicle.
2. Once stopped, an individual suspect may be frisked for weapons only if the officer reasonably believes the person to be armed and dangerous.
 - a. The officer must be able to articulate what specific facts or observations, together with reasonable inferences, aroused his/her suspicions.
 - b. Anytime an individual is stopped, frisked or searched for any reason, the officer shall document the circumstances that led up to this action, and the manner in

which it was performed, within a Field Interview/Field Observation/Investigatory Stop (“FIOS”) report (refer to *Policy #423.1 – Field Interviews/Observations*).

III. GENERAL CONSIDERATIONS AND GUIDELINES:

A police officer, under appropriate circumstances, may temporarily stop and briefly detain a person for the purpose of inquiring into possible criminal behavior even though the officer does not have probable cause to make a lawful arrest at that time. In addition, an officer may frisk such a person for weapons as a matter of self-protection when the officer reasonably believes that his/her own safety, or that of others nearby, is endangered. The purpose of this temporary detention for questioning is to enable the police officer to determine whether to make an arrest, investigate further, or to take no further police action at that time.¹

This policy recognizes that police officers are also charged with community caretaking functions that do not require judicial justification. The proper exercise of community caretaking responsibilities, however, is limited to circumstances where an officer acts in response to an immediate danger or concern for an individual’s well-being. Community caretaking does not include the detection, investigation, or the acquisition of evidence related to crime.²

A search for weapons is permissible whenever a police officer reasonably believes that he/she is dealing with an armed and dangerous individual, regardless of whether the officer has probable cause to arrest for a crime. The officer need not be absolutely certain that the individual is armed. The legal standard is whether a reasonably prudent person in the circumstances would be warranted in his/her belief that the officer’s safety, or that of others, was in danger.³

Investigatory stops by the police are considered to be “forcible” rather than “voluntary,” and are, therefore, held to be seizures under the Fourth Amendment. The degree of force appropriate to enforce a stop in a particular case is dependent upon the surrounding facts and circumstances.

If an officer fails to adequately enforce a stop, it could result in the escape of a dangerous criminal or pose a serious threat to the lives and safety of other persons. Conversely, the use, display, or threatened use of actual force to carry out an investigatory stop, when such force is not justified under the circumstances, could result in a finding by the court that an arrest occurred without probable cause, and any evidence obtained as a result would be excluded. It should also be noted that a premature or unnecessary stop could

¹ *Terry v. Ohio*, 392 U.S. 1 (1968); *Commonwealth v. Thibeau*, 384 Mass. 762 (1981).

² *Commonwealth v. Evans*, 436 Mass. 369 (2002) (officer approached vehicle pulled over on the side of a rural road at 11:30pm with its right blinker flashing); *Commonwealth v. Murdough*, 428 Mass. 760 (1999) (officer checked on motorist parked at rest area); *Commonwealth v. McDevitt*, 57 Mass. App. Ct. 733 (2003) (trooper approached vehicle sitting in the breakdown lane of the Massachusetts Turnpike).

³ *Commonwealth v. Narcisse*, 457 Mass. 1 (2010); *Commonwealth v. Depeiza*, 449 Mass. 367 (2007); *Commonwealth v. Va Meng Joe*, 425 Mass. 99, 102 (1997); *Commonwealth v. Matthews*, 355 Mass. 378 (1969).

destroy a good investigation that might have resulted in a subsequent valid arrest and a successful conviction.

Police officers should never hesitate to make an investigatory stop and perform a necessary frisk under appropriate circumstances in order to meet the practical needs of effective law enforcement. However, they should refrain from the indiscriminate or unjustified use of this authority. The courts do not only frown upon such police action, but it also detracts from the professional image of the police among the citizens of the community in which they serve.

IV. DEFINITIONS:

Investigatory Stop: is defined as the brief detainment of an individual, whether on foot or in a vehicle, based on reasonable suspicion for the purposes of determining the individual's identity and resolving the officer's suspicions of criminal conduct. This is often referred to as a "Terry Stop," an investigative detention, a seizure, or a threshold inquiry.

Reasonable Suspicion: exists when an officer, based on specific and articulable facts, and the rational inferences drawn from those facts, believes that an individual has committed, is committing, or is about to commit a criminal offense. Reasonable suspicion may be based on direct observations or a combination of factors, including, but not limited to, the individual's prior criminal record, furtive conduct or flight from the police, the giving of evasive or conflicting responses to police questioning, admissions or confessions, the nature of the area, and reliable hearsay.

Frisk: is defined as the pat down of the outer clothing, and the area within the immediate control of the person (including bags and other personal property) for weapons. An officer may only conduct a frisk when he/she reasonably suspects that the person stopped (1) committed, is committing, or is about to commit a criminal offense, and (2) is armed and dangerous, and thus poses a threat to the officer or others.

V. GROUNDS FOR MAKING A STOP:

- A. **Suspicious Activity:** It is a basic police duty to be alert for and check on suspicious persons or circumstances, particularly in the nighttime and in crime-prone areas.

1. An officer is warranted in making a brief investigatory stop and inquiry under the following circumstances:⁴
 - When a police officer knows that a crime has been committed.
 - When a police officer reasonably believes that a crime has been or is being committed.
 - When a police officer seeks to prevent a crime that he/she reasonably believes is about to be committed.
2. A police officer has the authority to stop a person for an investigative inquiry in any place where the officer has a right to be, including:
 - Any public place.
 - Any place or areas open to the public.⁵
 - Any private premises entered with a valid warrant, by consent, or under emergency circumstances.

B. Reasonable Belief of Suspicion: There is no precise formula for determining the legality of an investigatory stop, but it must be based upon a reasonable belief or suspicion on the part of the officer, at the time of the stop, that some activity out of the ordinary is taking place, that such activity is crime-related, and that the person under suspicion is connected with or involved in the criminal activity.

C. Investigatory Stops: An investigatory stop does not require probable cause; rather it requires the lesser standard of reasonable suspicion based on specific, articulable facts and reasonable inferences. It may be based upon the officer's own observations or information supplied by other reasonably reliable sources. The information on which the officer acts should be well-founded and reasonable. Lastly, an officer's hunch or pure guesswork, or an officer's unsupported intuition, is not a sufficient basis.

⁴ *Commonwealth v. Riggieri*, 438 Mass. 613 (2003), quoting *Commonwealth v. Wren*, 391 Mass. 705, 707 (1984) (“A police officer may stop a vehicle in order to conduct a threshold inquiry if he has a reasonable suspicion that the occupants have committed, are committing, or are about to commit a crime. His suspicion must be based on specific, articulable facts and reasonable inferences drawn therefrom. A hunch will not suffice.”).

⁵ *Commonwealth v. Butterfield*, 44 Mass. App. Ct. 926, 928-929 (1998) (no reasonable expectation of privacy in driveway that led to back door, where the driveway was not enclosed by trees, a fence, shrubbery, or any other obstructions).

D. Reasonableness Standard: No single factor alone is normally sufficient. The officer must assess the situation based on a consideration of all the relevant circumstances. The following are some of the factors which may be considered in determining the reasonableness of an investigatory stop and frisk by a police officer in the field:

1. The personal observations of the officer and his/her police training and experience;
2. A police officer's knowledge of criminal activity in the area;
3. The time of day or night, and the place of observation;⁶
4. The general appearance and demeanor of the person and any furtive gestures or behavior that indicates possible criminal conduct;⁷
5. The person's proximity to the scene of a recently reported crime;
6. Unprovoked flight of an individual upon noticing the police;⁸
7. The knowledge of the person's prior criminal record or his/her association with known criminals;
8. Visible objects in the person's possession or obvious bulges in his/her clothing, suggestive of weapons;
9. Resemblance of the suspect to a person wanted for a known crime;
10. Information received from police sources or from other reasonably reliable sources of information;
11. The type of crime being investigated;⁹
12. Whether the officer is alone or outnumbered;

⁶ *Commonwealth v. Matthews*, 355 Mass. 378, 381 (1969) (police were justified in stopping pedestrian observed at 2:50 a.m. carrying shopping bag through a residential neighborhood where there had been several incidents of breaking and entering); *Commonwealth v. Montgomery*, 23 Mass. App. Ct. 909, 910 (1986) (police were justified in stopping car that was cruising slowly at 2:30 a.m. through shopping center where numerous break-ins had occurred).

⁷ Walking with a "straight-arm" gait and/or shielding a particular area of clothing from an officer can provide a reasonable basis to believe a suspect is armed and dangerous. *Commonwealth v. Depeiza*, 449 Mass. 367 (2007).

⁸ *Illinois v. Wardlow*, 528 U.S. 119 (2000); *Commonwealth v. Wilson*, 52 Mass. App. Ct. 411, 414 (2001). Note, however, that flight from police alone is not enough to justify a seizure or stop.

⁹ "[W]here . . . the crime is one of violence or of the type for which the offender would likely be armed (including the unlawful carrying of a firearm), little more is required after the stop to justify a protective frisk." *Commonwealth v. Narcisse*, 457 Mass. 1, n.7 (2010). See also *Commonwealth v. Pagan*, 440 Mass. 62, 66 (2003) (noting that an officer investigating a breaking and entering may remove a backpack from a suspect and patfrisk the bag for burglarious implements that could be used as weapons against the officer).

13. Whether the individual stopped is located within an automobile;
14. Failure by a driver to produce a valid license and/or registration;¹⁰
15. Providing an unlikely story or incredible responses to routine questioning.¹¹

E. Exercising Due Caution: The fact that an individual has aroused the police officer's suspicion should cause the officer to make his/her approach with vigilance and due caution, while alert to the possibility of potential danger.

1. A routine police check of suspicious circumstances may uncover the commission of a serious crime or the presence of a dangerous criminal.
2. If the stopped suspect has just committed a major crime, he/she may be an immediate threat to the officer's safety, or he/she may suddenly attempt to flee from the scene.

F. Duration of Investigatory Stop: No hard and fast rule can be formulated to determine the period of time required for an investigatory stop but it should be reasonably brief under the particular circumstances.¹² The degree of suspicion the officer reasonably harbors must be proportional to the level of intrusiveness of the detention.¹³

1. A stop may only last long enough for the officer to make the threshold inquiry into whether the suspicions were or were not well-founded.¹⁴
2. An officer must use the least intrusive means possible to effectuate a stop.

¹⁰ *Commonwealth v. Lantigua*, 38 Mass. App. Ct. 526, 528 (1995) ("Inability to produce a license or a registration reasonably gives rise to a suspicion of other offenses, such as automobile theft, and justifies heightened precautions for the officers' own safety.").

¹¹ *Commonwealth v. Matthews*, 355 Mass. 378, 381 (1969) (stop and subsequent frisk warranted, in part, on defendant carrying a bag at an unusual hour of the morning in the vicinity where breaks had occurred and based on the defendant's unlikely story that he was walking from Boston to Brookline to visit a friend and that he chose the route taken because he wanted to walk).

¹² *United States v. Sharpe*, 470 U.S. 675 (1985) (noting that a twenty-minute detention of a suspect met the Fourth Amendment's standard of reasonableness); *Commonwealth v. Feyenord*, 445 Mass. 72, 76-81 (2005) (thirty-minute detention of car stopped for traffic violation reasonable where driver and passenger gave significant inconsistencies about their identities and destinations and where officer acted promptly in summoning canine unit to scene); *Commonwealth v. Tosi*, 14 Mass. App. Ct. 1029, 1030 (1982) (finding that a twenty-five-minute detention was reasonable because a need arose to transport a witness to the scene of the stop for identification of stolen property).

¹³ *Commonwealth v. Williams*, 422 Mass. 111, 116 (1996).

¹⁴ *Commonwealth v. Torres*, 424 Mass. 153 (1997) (noting that the continued detention of a driver and his passenger was no longer necessary after the driver had satisfied the purpose of the stop (speeding) by producing his license and registration).

3. If the answers given by the suspect are unsatisfactory because they are false, contradictory or incredible, they may serve as elements or factors to establish probable cause.¹⁵
4. The period of investigative detention should be sufficiently brief so that the “stop” cannot be construed as an “arrest,” which would require probable cause.¹⁶

VI. PROCEDURES FOR INVESTIGATORY STOPS & PATFRISKS:

- A. Factors to Consider During Questioning:** When an officer makes a decision to stop a person for investigative purposes, unless the officer is in uniform, he/she shall identify him/herself as a police officer as soon as it is safe and practical to do so and also announce the purpose of the inquiry unless such information is obvious.
1. An investigatory stop should begin with exploratory questions regarding the suspect’s identity and his/her purpose for being in a particular area.
 2. Every officer should initiate an investigatory inquiry in a calm, conversational manner in order to gain as much information as possible without placing the suspect on the defensive.
 3. Even in a brief conversation with a suspect, an alert and perceptive officer can often detect or sense that something is wrong and determine if further police investigation is required.
 4. An officer should always bear in mind; however, that he/she must have a firm foundation for the initial suspicions that led up to the investigatory stop in order to justify an investigative detention and inquiry. The officer must be able to articulate and commit his/her reasons to writing.
- B. Criteria for Pat Down Searches:** Not every circumstance that justifies a stop also justifies a frisk. A frisk is only justified to protect the officer and others from danger. If there is no danger, a frisk is not justified, even if a stop is warranted.¹⁷ If a police officer reasonably believes that his/her own safety or that of others is in danger, he/she may frisk or pat down the person stopped and may also search the

¹⁵ *Commonwealth v. Wilson*, 360 Mass. 557 (1971); *Commonwealth v. Matthews*, 355 Mass. 378, 381 (1969).

¹⁶ *Commonwealth v. Sanderson*, 398 Mass. 761 (1986) (holding that the police action was tantamount to an arrest rather than a brief investigative stop, where six troopers stopped an automobile, boxed it in with their cruisers, and detained it and its operator for forty minutes while the officers waited for a drug-sniffing canine to arrive at the scene). See also *United States v. Place*, 462 U.S. 696, 709 (1983) (ninety-minute seizure of airline passenger’s luggage was too long under circumstances, converting a stop in to an arrest).

¹⁷ *Commonwealth v. Gomes*, 453 Mass. 506 (2009) (holding that officers had reasonable suspicion to conduct an investigatory stop for a drug investigation, but that the subsequent patfrisk was not warranted because the officers lacked specific and articulable facts that the defendant was armed and dangerous).

area within that person's immediate control for weapons or other items that could inflict injury.

1. It is not necessary that the officer be absolutely certain that such person is armed. However, the officer must perceive danger to himself/herself or others because of events leading to the stop or which occurred after or during the stop.¹⁸
2. If the officer has a reasonable belief or suspicion, based upon reliable information or personal observation, that a subject is carrying or concealing a weapon on his person, the officer should immediately check that area before performing a general pat-down.
3. A frisk should not be made a pretext to search for evidence of crime; it must be a protective measure.
4. The frisk must initially be limited to an external pat-down of the suspect's outer clothing. However, if the outer clothing is bulky, such as a heavy overcoat, the garments may be opened to permit a pat-down of the inner clothing.
5. The officer may also frisk the area and containers within the subject's immediate control in order to discover and take control of any weapon that may be used to inflict injury.¹⁹
6. There are times when a patfrisk of a container (such as a backpack, suitcase or even hard leather/steel toed boots) may not be sufficient to detect whether a suspect has a weapon on his/her person or within his/her reach. It may be that for many, and perhaps most, containers made of soft material, a patfrisk will provide additional information either supporting or eliminating an officer's reasonable suspicion that a weapon may be hidden within. In such cases, a patfrisk of the container should ordinarily be performed prior to opening the container. With such containers, the patfrisk will either reveal a hard object and justify a further search, or the patfrisk will establish that no hard object is inside, thus dispensing with the need for any further search of the container. However, particular features of the container, readily observable by an officer, may make it apparent that nothing short of opening the container will suffice to address the officer's reasonable suspicions. In such cases, officers are not required to perform a preliminary patfrisk of the container. Thus, if the

¹⁸ *Gomes*, 453 Mass. at 512 (“While the officer need not be absolutely certain that the individual is armed, the basis for his acts must lie in a reasonable belief that his safety or that of others is at stake. As with the initial stop, the officer's actions must be based on specific and articulable facts and reasonable inferences therefrom, in light of the officer's experience.”).

¹⁹ *Commonwealth v. Pagan*, 440 Mass. 62, 66 (2003) (noting that an officer investigating a breaking and entering may remove a backpack from a suspect and patfrisk the bag for burglarious implements that could be used as weapons against the officer); *Commonwealth v. Myers*, 82 Mass. App. Ct. 172 (2012) (justifying a patfrisk of the interior driver's side of the vehicle even after the defendant had been ordered from the vehicle for safety concerns).

container is such that a patfrisk might suffice to establish that there is no potential weapon within, the container may not be opened as part of a search for weapons unless a patfrisk has first been performed. If, however, a patfrisk would not suffice to dispel suspicion and avert the need for a search, no patfrisk need be performed. In each case, the method and scope of an officer's search for reasonably suspected weapons must be confined to what is minimally necessary to discover the presence or confirm the absence of a weapon, and the specific circumstances will dictate what measures, including but not limited to a preliminary patfrisk, will satisfy that standard.²⁰

7. When a pat-down is conducted on a member of the opposite sex, officers shall use the preferred method for frisking of a person of the opposite sex (e.g., use the back of the hand or a baton).
8. If the officer feels an object that could reasonably be a weapon, he/she may conduct a further search for that particular object and remove it.
9. An officer may also seize contraband detected while frisking a suspect for possible concealed weapons, as long as the contraband is instantly recognizable by "plain feel."²¹ Whether contraband (including non-threatening contraband such as drugs) is instantly recognizable to the officer by "plain feel" may be dependent upon that officer's training and experience.²² The "plain feel" doctrine, however, "is limited; it does not permit an officer to conduct a general exploratory search for whatever evidence of criminal activity he might find."²³ If the officer must manipulate or otherwise further physically explore the concealed object in order to discern its identity, then an unconstitutional search has occurred.
10. If, after completing a pat-down of the subject, the officer does not feel any object that could reasonably be a weapon, the search shall be discontinued.
11. If, while frisking a stopped person, the officer discovers an illegal firearm, contraband, stolen property, or evidence of a crime, and probable cause to arrest develops, an arrest should be made and a full-scale search incident to that arrest should be made.

- C. Initial Approach at the Time of the Stop:** When a plain-clothed police officer makes a decision to stop a person for investigative purposes, he/she should identify him/herself as a police officer, as soon as it is safe and practical to do so. Both uniformed and plain-clothed officers should also announce the purpose of his/her inquiry unless such information is obvious.

²⁰ *Commonwealth v. Pagan*, 440 Mass. 62, 72-73 (2003).

²¹ *Minnesota v. Dickerson*, 508 U.S. 366, 375 (1993).

²² *Commonwealth v. Wilson*, 441 Mass. 390, 398-399 (2004).

²³ *Id.* at 396.

- D. Once the Stop is Made:** Once the officer effectuates a stop, any questioning of the individual stopped should be conducted at that location.
1. Investigatory stops are intended to be on-the-spot inquiries in which police officers confirm or dispel their suspicions quickly.
 2. To verify the information obtained from the person, it may be necessary to move a short distance to a radio or telephone.
 3. Under special circumstances, such as the gathering of a hostile crowd, heavy traffic, or the necessity to use the police radio, the person may be placed in the rear seat of a police vehicle.
 4. As part of an investigatory stop, the person may be detained for a short time so that an eyewitness may be brought to the scene to make an in-person identification.²⁴
 5. Because an investigatory stop is a non-custodial seizure, police are not obligated to advise a suspect of his/her Miranda warnings prior to threshold questioning.²⁵ However, should an officer restrain a person beyond the extent minimally necessary to effectuate the stop, a custodial situation may exist in which *Miranda* will apply (refer to *Policy #425 – Interrogation of Suspects and Arrestees*).²⁶

²⁴ *Commonwealth v. Crowley*, 29 Mass. App. Ct. 1, 4-6 (1990) (walking a suspect from the street back into the bank from which he had just exited); *Commonwealth v. Salerno*, 356 Mass. 642 (1970) (asking a suspect to come out of a barroom to the street). Courts have recognized that moving the witnesses to the suspect is a less intrusive procedure.

²⁵ *Berkemer v. McCarty*, 468 U.S. 420, 442 (1984). See also *Commonwealth v. Sauer*, 50 Mass. App. Ct. 299, 301-302 (2000) (traffic stop leading to reasonable suspicion of narcotics violations did not require officer to give detainee Miranda warnings because officer's inquiries were part of initial fact-finding process); *Commonwealth v. Shine*, 398 Mass. 641, 647-649 (1986) (Miranda warnings not required prior to preliminary questions designed to determine defendant's identity and what he knew about crime).

²⁶ For purposes of the Fifth Amendment, "custody" is somewhat broader in scope than "arrest." Custodial interrogation means "questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way." *Miranda v. Arizona*, 384 U.S. 436 444 (1966). See also *Commonwealth v. Larkin*, 429 Mass. 426, 432 (1999). Accordingly, Miranda warnings should be provided whenever a police officer intends to question a suspect who is under arrest or restrained to the degree associated with a formal arrest. *California v. Beheler*, 463 U.S. 1121, 1125 (1983). See also *Commonwealth v. Gordon*, 47 Mass. App. Ct. 825, 827 (1999) (defendant in custody where handcuffed and placed in a cruiser to be transported to crime scene for show-up). To prevent a stop from becoming an arrest or custodial situation, the degree of police intrusion upon the individual must be proportional to the degree of suspicion that prompted the intrusion. *Commonwealth v. Borges*, 395 Mass. 788, 794 (1985); *Commonwealth v. Sanderson*, 398 Mass. 761 (1986).

- E. Suspect Refusing to Stop:** If the person fails or refuses to stop when so directed by a police officer, reasonable force and physical restraint (including handcuffs) may be justified, depending upon the circumstances.²⁷
- F. Use of Force to Stop:** Actual force may be used to stop an individual, as long as the force is both necessary and proportionate to the situation.²⁸ However, this does not include the discharge of firearms or application of other weapons or devices, such as the PR-24 and Oleoresin Capsicum spray (refer to *Policy #400.1 – Use of Force*).
- G. Self Defense:** If an officer is attacked, sufficient and reasonable force may be used to defend himself/herself and to ensure his/her personal safety.
- H. Probable Cause for Arrest:** When combined with the observations and information which led the officer to reasonably suspect criminal activity may be afoot, if the suspect runs or tries to evade the officer, that additional factor may give rise to sufficient probable cause to make an arrest.²⁹

VII. MOTOR VEHICLE STOPS:

- A. Investigatory Motor Vehicle Stops:** When an investigatory stop involves a motor vehicle, the vehicle may be stopped and its occupants may be briefly detained and questioned by the police if there is a reasonable suspicion of criminal activity or a motor vehicle violation.³⁰

²⁷ *Commonwealth v. Williams*, 422 Mass. 111 (1996) (noting that officers approached suspect with guns drawn and physically restrained him when he attempted to flee); *Commonwealth v. Pandolfino*, 33 Mass. App. Ct. 96, rev. den. 413 Mass. 1106 (1992) (holding that the use of handcuffs, if necessary to accomplish a permissible inquiry, does not convert an investigatory stop to an arrest).

²⁸ *Commonwealth v. Borges*, 395 Mass. 788 (1985) (noting that removing the defendant's shoes was not proportionate to the degree of suspicion harbored by the officers); *Commonwealth v. Reed*, 23 Mass. App. Ct. 294 (1986) (finding that police officers boxing in van with two police cruisers was an investigatory stop, not an arrest).

²⁹ *Commonwealth v. Va Meng Jo*, 425 Mass. 99 (1997) (“The defendant stepped out of his automobile while stopped in traffic at a red light when approached by the police officers and furtively reached into his pocket, removing his hand from his pocket only after [the approaching officer] drew his gun.”); *Commonwealth v. Sweezey*, 50 Mass. App. Ct. 48 (2000) (“The defendant's abrupt attempt to evade the officers while they were approaching and after they identified themselves as police properly may be viewed as elevating the officers' reasonable suspicion of drug activity to the level of probable cause justifying an arrest for possession of illegal drugs.”).

³⁰ *Delaware v. Prouse*, 440 U.S. 648 (1979). See also *Commonwealth v. Bacon*, 381 Mass. 642, 644 (1980) (“Where the police have observed a traffic violation, they are warranted in stopping a vehicle.”); *Commonwealth v. Baez*, 47 Mass. App. Ct. 102, 104 (1999) (holding that officer had reasonable articulable suspicion to stop motor vehicle based on his visual observations and opinion that tinting of windows exceeded permissible limits). But see *Commonwealth v. Torres*, 424 Mass. 153 (1997) (noting that the continued detention of a driver and his passenger

1. Police cannot randomly stop motorists to check orderliness of license and registration.
2. All police officers must be especially alert and watchful when making an investigatory stop of a motor vehicle, as many officers have been seriously injured, some fatally, in taking this kind of police action.
3. During the course of the stop, probable cause to search the vehicle may develop – such as through conversation with the occupants or observations of contraband or weapons in plain view.³¹
4. During a routine traffic stop, police officers may not order the driver or occupant out of the vehicle without a reasonable apprehension of danger to the officer or others.³²
 - If the occupants of a vehicle are ordered out of the vehicle, they may be frisked if the officer reasonably believes that they may be armed and dangerous and that the police officers or others nearby may be endangered.³³
 - Even after frisking the occupants, if the officers have reason to believe that there is still a possible danger, they should inspect those areas of the motor vehicle readily accessible to an occupant that may contain a dangerous weapon.
5. A protective search of the interior of a motor vehicle must be limited to what is minimally necessary to determine whether the suspect is armed and to remove any weapon discovered.³⁴

was no longer necessary after the driver had satisfied the purpose of the stop (speeding) by producing his license and registration).

³¹ *Commonwealth v. Va Meng Jo*, 425 Mass. 99 (1997) (“Since there is no doubt that the initial stop was justified, events subsequent to the lawful stop, coupled with the factors that supplied the police officers with ample reasonable suspicion to make the investigatory stop, provided the police officers with probable cause to arrest and search the defendant.”); *Commonwealth v. Robbins*, 407 Mass. 147, 151-152 (1990) (officer observed a brown-handled object protruding from the front seat); *Commonwealth v. Lantigua*, 38 Mass. App. Ct. 526 (1995) (during a stop for a traffic violation, the officer saw a plastic bag of white powder in plain view on the floor of the car).

³² *Commonwealth v. Stampley*, 437 Mass. 323, 328 (2002) (noting that “justification for an exit order does not depend on the presence of an ‘immediate threat’ at the precise moment of the order, but rather on the safety concerns raised by the entire circumstances of the encounter”); *Commonwealth v. Gonsalves*, 429 Mass. 658 (1999) (rejecting *Pennsylvania v. Mimms*, 434 U.S. 106 (1977), but noting that “it does not take much for a police officer to establish a reasonable basis to justify an exit order or search based on safety concerns”).

³³ *Commonwealth v. Hawkes*, 362 Mass. 786 (1973); *Commonwealth v. Lantigua*, 38 Mass. App. Ct. 526 (1995).

³⁴ *Commonwealth v. Silva*, 366 Mass. 402 (1974). See also *Commonwealth v. Graham*, 78 Mass. App. Ct. 127, 128-129 (2010) (police did not exceed scope of protective search by opening locked glove compartment where valid safety concerns necessitated doing so); *Commonwealth v. Cruz-Rivera*, 76 Mass. App. Ct. 14 (2009) (“A patfrisk may legitimately extend into the interior of an automobile, but police are confined to what is minimally necessary to learn whether the suspect is armed and to disarm him once the weapon is discovered.”).

6. A protective search for weapons in a motor vehicle must be confined to the area from which the occupant might gain possession of a weapon.³⁵

B. Detaining Passengers During a Motor Vehicle Stop: While an officer may detain a passenger during a traffic stop, even without particularized reasonable suspicion that the passenger has committed a crime, police officers may not continue the detention of the passenger beyond the completion of the issued citation, without further reasonable suspicion to investigate matters not related to the traffic offense.³⁶

C. Random Motor Vehicle Stops: With the exception of properly conducted sobriety checkpoints, random stops of motor vehicles in the absence of reasonable suspicion of motor vehicle violations or criminal activity constitutes an unreasonable seizure in violation of the Fourth Amendment and any evidence obtained as a result of such impermissible stops are excludable in court.³⁷

VIII. REPORTING REQUIREMENTS:

A. Reporting Field Interviews /Observations and Investigatory Stops: The information or intelligence that may be obtained as a result of a field interview, field observation, or investigatory stop may have immense importance to an ongoing investigation or may serve as important intelligence relative to future investigations. It may also provide factual and legal justification for elevating initial suspicions to those that would support more intrusive police action. Unless information obtained during field interviews, field observations, and investigatory stops is collected and shared, it is of little value except to the officer making the observations. Pooling this information potentially benefits the entire department.

³⁵ *Commonwealth v. Almeida*, 373 Mass. 266 (1977) (noting that although the defendant was not in the automobile at the time it was searched, he was not under arrest, and there was no assurance that he would not be returning promptly to his seat behind the wheel of the automobile). See also *Commonwealth v. Myers*, 82 Mass. App. Ct. 172 (2012) (noting that the defendant could have returned to the vehicle and recovered a hidden weapon).

³⁶ *Commonwealth v. Torres*, 424 Mass. 153 (1997) (noting that a passenger in a motor vehicle can reasonably harbor a higher expectation of privacy than the driver because a passenger, in the absence of his own individual misbehavior or suspicious conduct, could expect that the formalities involved in a traffic stop would take place solely between the driver and the officer.) See also *Commonwealth v. Ellsworth*, 41 Mass. App. Ct. 554 (1996) (during motor vehicle stop, a rear seat passenger appeared to be bending forward as if to place an object under the seat in front of him; “no question that Officer [] would have been justified, when his concern for his safety was aroused by what he saw as the furtive movement of the rear seat passenger, in taking steps to protect his safety during the stop by ordering the occupants out of the car.”); *United States v. Starks*, 301 F. Supp. 2d 76 (D. Mass. 2004) (finding that officers lacked reasonable suspicion to continue to detain a passenger, where he had not acted suspiciously, officers had no reason to believe he was armed or had criminal record, and he complied with all police instructions).

³⁷ *Delaware v. Prouse*, 440 U.S. 648, 99 S.Ct. 1391 (1979).

Toward this end, the department has created a Field Interview / Field Observation/ Investigatory Stop (“FIOS”) report form (see attached form). The following guidelines shall be adhered to with regards to FIOS reports:

1. Whenever an officer engages in a field interview or a field observation, the officer shall complete a FIOS report (paper form or computer generated form) with as much information as can be gathered during that particular incident. This must include the legitimate intelligence purpose for the field interview or field observation. A legitimate intelligence purpose may include, but is not limited to, instances when an officer observes and/or interviews:
 - An individual known to be associated with a gang or criminal enterprise;
 - An individual that is the subject of an on-going investigation;
 - An individual that is known to the officer to be under some form of pre- or post-trial supervision;
 - An individual in a suspicious neighborhood or location based on his/her known associations;
 - An individual acting suspiciously because of the time of day at which the activity is observed;
 - An individual that appears to be engaging in or about to engage in criminal behavior.
2. In the event that a field interview escalates in to an investigatory stop, or where an investigatory stop is initially conducted, the officer shall provide as much supporting information as can be gathered to establish the reasonable suspicion for the stop. In the event that a patfrisk occurs during an investigatory stop, the officer shall also provide as much information as can be gathered substantiating the officer’s reasonable belief that the individual was armed and dangerous.
3. In addition to a detailed account of the encounter or observation, noting the legitimate intelligence purpose, and/or documenting sufficient facts establishing reasonable suspicion, the officer must also record the date, time, and location of the field interview, field observation, or investigatory stop. The officer should also include the race of the individual, and may include ethnicity when appropriate.
4. Should a field interview escalate in to an arrest, the officer shall incorporate all of the information obtained during the encounter into the appropriate police investigation report, being sure to attach all personal information and any vehicular information to the appropriate files.

5. All FIOS reports shall be reviewed and approved by a superior officer. The approving officer shall ensure that all FIOS reports meet the standards set forth in this policy, including, but not limited to, the proper and detailed documentation of (1) a legitimate intelligence purpose in the event of a field interview or field observation, (2) reasonable suspicion in the event of an investigatory stop, and (3) officer safety concerns in the event of a patfrisk.
6. All completed and approved FIOS reports shall be submitted along with all other police reports, prior to the completion of an officer's shift, to a repository located in the Shift Commander's office where the Crime Analysis Unit will collect them and enter them in to the Records Management System and potentially in to current or future Regional Intelligence Systems.

B. Homeland Security: Whenever an officer determines that an individual may be engaged in suspicious activity that relates to Homeland Security the officer shall document the determination and the police response related to the activity in an Incident Report. Some examples of such suspicious activity may include, but are not limited to, the following;

1. Persons observed, or reported to have been, taking photographs, making sketches, or taking unusual interest in the details of certain infrastructure such as tunnels, bridges, fuel storage facilities, or similar venues that may be considered high value targets for terrorism activity.
2. Persons who are in possession of, or attempt to gain possession of, uniforms, equipment, or identification that may not be consistent with legitimate needs.
3. Persons in possession of false or altered identification documents.
4. Persons involved in acquiring unusual materials, or inordinate amounts of materials that could be used in the making of dangerous devices.

C. Access to FIOS Reports: The department will provide access to FIOS reports in the Records Management System for each sworn officer and authorized user.

1. Officers will have the following access permissions:
 - **READ** all reports within the system;
 - **SEARCH** for specific reports within the system; and
 - **PRINT** reports in order to comply with court discovery or to include in investigative files.

- D. Dissemination:** Officers may access the Records Management System to print or conduct searches for FIOS reports when there is a legitimate law enforcement purpose for doing so, such as an ongoing investigation or in support of a prosecution. All FIOS reports ordered by the court to be produced, requested by defense counsel, or requested by a member of the public shall be directed to the **Department Head or his/her designee.*