

# Social Contacts and Terry Stops

Facilitator Guide

## Session Overview

Introduction & Learning Objectives	05m
<b>DISCUSSION</b> – Social Contacts	15m
<b>DISCUSSION</b> – Pre-Text Contacts & Profiling	15m
<b>DISCUSSION</b> – Investigative Detention	15m
<b>Break</b>	<b>10m</b>
<b>DISCUSSION</b> – Terry “Investigative” Contacts	45m
Questions	05m
<b>End of Session / Break</b>	<b>10m</b>

### Learning Objectives:

- Recognize the limitations of a social contact
- Explain the difference between Article 1 Section 7 of the Washington Constitution and the 4<sup>th</sup> Amendment of the US Constitution
- List the 3 factors in Washington that a Terry stop is judged by

*Total Session Time: 2 hours*

### **Main Topics of Session:**

- *Social Contacts*
- *Pre-text Contacts*
- *Terry v. Ohio*
- *Terry Stop Considerations*
- *Defacto Arrests*

### **Facilitators Needed: 1 (CP)**

**Location: Classroom**

### **Materials Needed:**

- *PowerPoint – Field Contacts*
- *FG Supp – Social Contacts & Terry Stops*
- *HANDOUT – PowerPoint Presentation for Notes*

### **Students Should Already Have:**

*[THUMB DRIVE]*

- *HANDOUT - Investigative Detentions*
- *HANDOUT - Terry, Frisk, and Search Checklist*
- *HANDOUT - FI - Criminal Procedures Sandbox*
- *HANDOUT - FI - Terry Detentions*



# Social Contacts and Terry Stops

Facilitator Guide



## What's it all about?

- Understanding field contacts comes with an acceptance of some basic principles...
  - Field contacts are *dynamic*
  - An officer must *prepare* for how to initiate a field contact (make a decision)
  - An officer must prepare to *re-evaluate* the level of contact initiated and *modify* as necessary.

Provide examples from your own experience on how field contacts can change and flow through Social, Terry & PC.

## Social Contacts

- A seizureless contact which requires no particular threshold of information to initiate.
- "an officer may approach anybody in a public place, in a reasonable fashion, and request to speak to him / her"
- Because this is a non-custodial contact, the citizen is **free to leave at any point**, as well as not speak to you!



# Social Contacts and Terry Stops

Facilitator Guide



## SAY TO CLASS

It is important for you to understand that you must tell citizens where they are on the contact scale when they touch them or tell them to stop. Otherwise, your actions may be viewed as a seizure or defacto arrest.

If a reasonable person would believe they are under arrest or are not free to go when the police put hands on them, it is a detention....unless the officer actually says the words "you are being detained" as in a Terry stop, or "you are free to go at any time but thanks for cooperation" during a consent search and/or a social contact.

*State v. Soto-Garcia*  
*68Wn.App20*

### Tactics that might imply detention during a social contact...

- Handcuffing
- Giving commands or telling them to "stop" or "you are not free to go"
- Walking away with ID to run their name
- Transporting them anywhere without consent
- Number of officers present when consent is given
- Cutting off avenues of escape
- Frisk
- Request to search

### Pre-text Contacts

- A pre-text contact occurs when:

*"the police use a legal justification (such as a traffic infraction) in order to stop and contact a citizen for a unrelated, more serious offense (a criminal act) for which the officer did not have the reasonable suspicion or probable cause by which to otherwise make the contact."*

Key is consistency of behavior.



# Social Contacts and Terry Stops

Facilitator Guide

## Pre-text Contacts

- The U.S. Supreme Court has stated that "pre-text stops" do not exist. You either have PC or you don't!
- The Washington Supreme Court has applied Article 1 section 7 of the Washington State Constitution, stating that "pre-text stops" are a violation of a persons reasonable expectation of privacy.



### SAY TO CLASS

Refer to *State V. Ladson* - a Washington State Supreme Court case applying Article 1 Section 7 of the Washington State Constitution (which is more restrictive on officers' authority than the 4<sup>th</sup> Amendment).

A pre-text stop or Ladson violation occurs by a showing of:

- **Subjective evidence** - showing that the officer had a pre-textual motive through his or her own admission, OR
- **Objective evidence** - showing that the officer did not follow normal or standard practices or procedures for that officer.

*State v. Ladson* 138  
Wn.2d 343

## Profiling and Citizen Contacts

A profile contact occurs when the police use generalized factors consistent with criminal behavior, but falling short of reasonable suspicion or probable cause, to initiate contact with the public.



# Social Contacts and Terry Stops

Facilitator Guide



## SAY TO CLASS

A good example to demonstrate this concept is an officer's observation of citizens dressed like gang members and flashing gang signs. If this is all the officer observes, then no criminal activity is afoot (*Terry v. Ohio* 1968). A social contact in this situation would be OK but there would be no reasonable suspicion therefore a detention would not be warranted.

*Terry v. Ohio*

Remember when deciding whether or not a person is free to go or is detained, you must concentrate on what they are "doing" not what they are wearing or what they look like.

It is critical to recognize that any contact you make, whether criminal activity is afoot or not, needs to be considered by an officer and judged on the totality of the circumstances.

### Investigative Detention

- The U.S. Supreme Court stated:

*"...when the police have a well founded suspicion of criminal activity, not amounting to probable cause, they may stop a person, ask for identification and an explanation of their activities. The behavior of the citizen may provide the basis for expanding the officer's inquiry"*

Terry v Ohio 1968

### Investigative Detention

#### Reasonable Suspicion -

Particularized articulable facts and circumstances that lead a reasonable and prudent police officer, based upon their training and experience, to believe criminal activity is afoot. (criminal activity has happened, is happening, or is about to happen).

***This is the "Terry Stop" standard for investigative detention.***



# Social Contacts and Terry Stops

Facilitator Guide

## Investigative Detention

- What is seizure??
  - The stopping of a person, however brief, constitutes a seizure which must be reasonable under the circumstances.
  - The TOTALITY of the circumstances!

Make the scene safe...  
then investigate!



### SAY TO CLASS

“Suspicious” behavior does not always escalate a contact to a Terry stop. You must be able to articulate “*reasonable* suspicion that a crime is occurring, has occurred or is about to occur” and that the person you detained was involved.

Do not ignore suspicious behavior, but take the time to determine what you have and what your goals are in contacting the person prior to making contact (i.e. identify them, interview them, etc.). This will help you determine if you are at the level of a social contact or a Terry stop.

Be careful when telling a person to “stop” - even without touching them the courts have determined this to be a seizure under the 4<sup>th</sup> Amendment.

Provide examples of how a social contact can transition to a Terry stop.

## Investigative Detention

- Scope of Inquiry (Washington Rule)
  - In WA, a Terry stop is judged by 3 factors:
    - The purpose of the stop
    - The physical intrusion upon the liberty of the person
    - The length of time/duration of the stop

ie: Did the police diligently pursue a means of investigation that was likely to confirm or dispel their suspicions quickly?



BREAK



# Social Contacts and Terry Stops

Facilitator Guide

## Investigative "Terry" Contacts

- Your actions are generally limited to:
  - use of reasonable force to stop the citizen,
  - asking questions so as to conduct a preliminary inquiry,
  - detaining the citizen for a reasonable period of time so as to conduct the contact.

Discuss the details of *Terry v. Ohio* and the resulting Court opinion in the case.

## Investigative "Terry" Contacts

- So what makes for good *reasonable suspicion*?
  - Juveniles wearing gang attire and flashing signs?
  - Presence in a high crime area?
  - Racial incongruity?
  - Appearance to a wanted person?
  - Time or area proximity to a recent crime?
  - Full flight away at sight of police?

### Relevant cases:

- *State v Kennedy* 107 Wn.2d
- *State v Duncan* 146 Wn.2d 166
- *State v Martinez* (2006 case in Nov. 06 LED)



### SAY TO CLASS

Remember that to have a lawful detention, the officer must have *particularized articulable reasonable suspicion* based on a totality of the circumstances.

## More Factors to Consider:

- Personal observations
- Time of day
- Type of area ( Commercial vs. Residential)
- Incidents of a particular crime in area
- Furtive conduct of a subject
- Knowledge of inhabitants of area
- Officer's expertise of a particular crime
- Witness or informant information



# Social Contacts and Terry Stops

Facilitator Guide

## Investigative "Terry" Contacts

- Can a Terry contact turn into a defacto arrest?
  - *The courts have said "yes" dependant upon the tactics employed by the officer(s).*



### SAY TO CLASS

As an officer, you need to be aware of your limitations when you have someone detained with reasonable suspicion, but do not yet have probable cause for an arrest.

Unless the officer can articulate an emergent situation or exigent circumstance, moving the detained person from the place of the stop could be construed as a defacto arrest.

If you need to do a witness identification, you must bring the witness to the suspect.

*Terry allows you to stop and detain an individual **NOT** move them.*

## Investigative "Terry" Contacts

- Tactics that might imply "custody" on a "Terry" stop could include:
  - unreasonable use of force
  - handcuffing a non-threatening subject
  - Without articulable reasons..moving/transporting the subject to the station
  - excessive length of detention
  - Telling them they are under arrest





# Social Contacts and Terry Stops

Facilitator Guide

## Let's think and talk ethics

- What are some of the things we may want to consider ethically, when involved in a citizen social contact, and a "Terry Stop."
  - Are we really doing a pre-text stop and not calling it that?
  - Are we demanding instead of asking?
  - Are we dramatizing an incident or using creative writing to justify our actions?

Take your time to figure it out - know your parameters - balance with officer safety.



**STUDY MATERIAL** - [HANDOUT - Investigative Detentions](#)  
 - [HANDOUT - Terry, Frisk, and Search Checklist](#)  
 - [HANDOUT - FI - Criminal Procedures Sandbox](#)  
 - [HANDOUT - FI - Terry Detentions](#)

Instructions: These handouts and resources are available on the student's thumb drive for reference.



**BREAK/END OF SESSION**

