

Terry Detentions

Session Materials

Definitions

A *Terry* detention is a seizure for investigative purposes. To justify a *Terry* stop under the Fourth Amendment and art. I, § 7, a police officer must be able to "point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion." The level of articulable suspicion necessary to support an investigative detention is "a substantial possibility that criminal conduct has occurred or is about to occur." Probable cause is not required for a *Terry* stop because a stop is significantly less intrusive than an arrest.

Terry stops in Washington are limited to crimes, and traffic infractions. A *Terry* stop may not be made to investigate a non-traffic infraction. It must be noted that Washington law does not permit "racial incongruity" to support a finding of reasonable suspicion. "Racial incongruity" is defined by the Washington Supreme Court as a person of any race being allegedly "out of place" in a particular geographic area.

Scope of Seizure

The scope of an investigatory stop is determined by considering:

1. The purpose of the stop.
2. The amount of physical intrusion on the suspect's liberty.
3. And the length of time of the seizure.

A *Terry* stop of a person or car is justified if the officer can "point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion."

When reviewing the merits of an investigatory stop, a court must evaluate the totality of circumstances presented to the investigating officer. The court takes into account an officer's training and experience when determining the reasonableness of a *Terry* stop. Subsequent evidence that the officer was in error regarding some of his facts will not render a *Terry* stop unreasonable. "The Fourth Amendment does not proscribe 'inaccurate' searches only unreasonable' ones". A *Terry* stop is also not rendered unreasonable solely because the officer did not rule out all possibilities of innocent behavior before initiating the stop.

A *Terry* stop, investigative detention, must last no longer than is necessary to verify or dispel the officer's suspicion, and the investigative methods employed must be the least intrusive means reasonably available to effectuate the purpose of the detention. The reasonableness of police activity during the *Terry* stop must necessarily depend on the facts of each particular case.

An appropriate and reasonable intrusion under one set of facts might be inappropriate under another fact situation. In evaluating the validity of the detention, the court must consider "the totality of the circumstances - - the whole picture". This includes information given the officer, observations the officer makes, and inferences and deductions drawn from his or her training and experience. Under



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the totality of the circumstances test for investigatory stops, an officer may rely on combination of otherwise innocent observations to briefly pull over a suspect.

An important factor comprising the totality of circumstances which must be examined is the nature of the suspected crime; a violent felony crime provides an officer with more leeway to act than does a gross misdemeanor.

Purpose for stop

A *Terry* stop may be made of a person or vehicle pursuant to objective factors to believe an individual may have been involved in a crime. The information giving rise to such a belief may come from an officer's personal observations, from information known only to a fellow officer, or from citizen or professional informants.

Amount of physical intrusion

The physical intrusion must be limited to that necessary to affect the stop in a safe and effective manner. Activities that may not be justified at the inception of the stop, may become appropriate as the investigation continues.

Length of time

There is no bright line rule for how long is too long for a *Terry* stop.

Courts, however, begin to get concerned once the stop exceeds the 20 minute maximum suggested by the American Law Institute. Detentions of 20 minutes or longer have, however, been upheld in Washington when the delay was due to investigation/officer safety reason and not merely for harassment.

In determining whether a detention was unreasonably long in duration, courts look at the officer's actions and whether the officer **diligently** pursued a means of investigation which would likely confirm or dispel his or her suspicions. "A court making this assessment should take care to consider whether the police are acting in a swiftly developing situation, and in such cases the court should not indulge in unrealistic second-guessing.... But the fact that the protection of the public might, in the abstract have been accomplished by 'less intrusive' means does not, itself, render the search unreasonable."

The detention must be promptly terminated when the officer has facts sufficient to exclude the detainee from suspicion. Thus, while an officer may make a *Terry* stop of a vehicle if the officer has knowledge that the registered owner of the vehicle is suspended; the *Terry* stop must end as soon as the officer determines that the operator of the vehicle cannot be the registered owner.



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Review of Key Differences in Terry Detentions: The 4th Amendment of US Constitution and Article 1 Section 7 of the WA State Constitution

4th Amendment Seizure

Under the Fourth Amendment one is seized only “if in view of all the circumstances surrounding the incident, a reasonable person would have believed that he was not free to leave.”

4th Amendment Seizure Scope of Inquiry

A reviewing court must decide:

- Whether the officer’s stop was justified
- Whether the delay (duration) was excessive (no time limit, only if the stop was excessive)
- Whether the frisk was “too intrusive”

Article 1, Section 7 Seizure

Under Article 1 Section 7, one is seized when **particularized articulable facts** and circumstances that lead a reasonable and prudent police officer, based on their training and experience, to believe criminal activity is afoot.

Article 1, Section 7, WA Scope of Inquiry

A reviewing court must decide and judge 3 factors:

- The purpose of the stop
- The physical intrusion upon the liberty of the person
- The length of time/duration of the stop

Is There a Time Factor?

Courts are beginning to get concerned once the stop exceeds the 20 minute maximum suggested by the American Law Institute. Detentions of 20 minutes or longer have, however, been upheld in Washington when the delay was due to investigation/officer safety reason and not merely for harassment.

The Question is?

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

Remember...

Your decisions should be reasonable and based upon the totality of circumstances.

