

RENO POLICE DEPARTMENT GENERAL ORDER

This directive is for internal use only and does not enlarge this department's, governmental entity's and/or any of this department's employees' civil or criminal liability in any way. It is not to be construed as the creation of a particular standard of safety or care in an evidentiary sense, with respect to any complaint, demand for settlement, or any other form of grievance or litigation. Violations of this directive, if substantiated, can only form the basis for intra-departmental administrative sanctions.

Chief of Police: Jerry Hoover /s/		
Legal Advisor: Karen Fraley /s/		
Approving Deputy Chief:		
General Order No: T-400-04	Issued: June 9, 2004	Supersedes: 3/220.000
General Order Title: STOP AND FRISK GUIDELINES		

POLICY

The Reno Police Department will conduct its affairs, duties, and responsibilities free of arbitrary discrimination or racial profiling in accordance with the laws of the United States and the State of Nevada, and provide equal treatment to all citizens in a fair and impartial manner.

PROCEDURES

Investigative Detention (Terry Stop)

NRS 171.123 Temporary Detention by Peace Officer

1. Any peace officer may detain any person whom the officer encounters under circumstances which reasonably indicate that the person has committed, is committing, or is about to commit a crime.
2. Any peace officer may detain any person that the officer encounters under circumstances which reasonably indicate that the person has violated the conditions of his parole or probation.
3. The officer may detain the person pursuant to this section only to ascertain his identity and the suspicious circumstances surrounding his presence abroad. Any person so detained shall identify himself, but may not be compelled to answer any other inquiry of any peace officer.
4. A person must not be detained longer than is reasonably necessary to effect the purposes of this section, and in no event longer than 60 minutes. The detention must not extend beyond the place or the immediate vicinity of the place where the detention was first effected, unless the person is arrested.

The Nevada Statute (NRS 171.123) is based upon the United States Supreme Court case of

Terry vs. Ohio. This case established circumstances under which a peace officer may detain person/s for investigative purposes.

1. The officer must be able to articulate reasonable suspicion for the stop with subsequent probable cause for any arrest. The officer must base the detention upon the facts and circumstances known at the time.
2. Once it becomes clear that the detained person/s is not involved in the suspected crime, they must be released without further detention, and/or informed of such.
3. The detention may not last more than 60 minutes, nor may it extend beyond the immediate vicinity where the stop was made.
4. The requirements of a lawful detention do not give peace officers the authority to conduct automatic pat or weapon (frisk) searches of detained person/s, unless the officer can articulate a reasonable belief that the person he has detained, or is about to detain, is armed with a dangerous weapon and a threat to the peace officer.

Pat Searches (Weapons Frisk)

NRS 171.1232 Search to Ascertain Presence of Dangerous Weapons; Seizure of Weapon of Evidence

1. If any peace officer reasonably believes that the person whom he has detained or is about to detain pursuant to NRS 171.123 is armed with a dangerous weapon and a threat to the safety of the peace officer or another, the peace officer may search such person to the extent reasonably necessary to ascertain the presence of such weapon. If the search discloses a weapon or any evidence of a crime, such weapon or evidence may be seized.
2. Nothing seized by a peace officer in any such search is admissible in any proceeding unless the search, which disclosed the existence of such evidence, is authorized and conducted in compliance with this section.

A lawful Terry stop alone does not give the officer the right to conduct a search. The ability to search is based upon a lawful detention coupled with a reasonable officer's belief and ability to articulate that the person to be searched is armed. This reasonable belief should be based upon the totality of the facts and circumstances known at the time of the search. If the officer is unable to articulate this information in the police report and court proceeding any evidence would be inadmissible in a court proceeding.

The seizure of contraband is covered by the "Plain Feel Doctrine." The issue is whether and when "plain feel" (pursuant to a lawful stop and frisk) would allow officers to legally seize items other than suspected weapons.

1. The officer must have grounds for a lawful Terry stop.
2. The officer must be able to articulate the facts and circumstances leading to a reasonable suspicion that the person is armed and a threat.

3. During the frisk for weapons, if the officer feels an item that is not a suspected weapon, however it is immediately apparent from the mass and contour that the item is contraband, that officer can legally seize it (without having to arrest the person and rely upon search incident to arrest). The ability to immediately recognize contraband is based upon the knowledge and experience of a reasonable peace officer. Manipulating an item to identify it exceeds the permissible boundaries of a frisk for weapons. If manipulation is necessary in order to identify an item as contraband, it is not “immediately recognizable” as required by the “plain feel doctrine,” and therefore would not be admissible as evidence.
4. A frisk may also be conducted after receiving voluntary consent to search from a person who has been lawfully detained.

Flight from Police Officers (Illinois vs. Wardlow)

Mere flight from a police officer in and of itself does not constitute justification for either an investigative detention (Terry stop) or probable cause for arrest. Flight from a police officer is just one factor to be considered in determining whether an individual’s conduct is sufficiently suspicious to provide the reasonable circumstances necessary for a Terry stop (NRS 171.123). As indicated below, flight alone is also not sufficient to justify an Obstructing and Resisting Arrest. The officer must articulate all the factors and circumstances which justified the Terry stop in the police report and during any subsequent court testimony.

Obstructing and Resisting an Officer/Flight from Lawful Detention

RMC 8.16.010(a)(3) defines flight as the “going away from a peace officer to avoid detention or arrest.” RMC 8.16.010(b) states that “[a] person shall not interfere with a peace officer or a person acting at the direction of a peace officer, in the performance of his lawful duty, by . . . (4) flight . . .”. The ordinance permits the arrest of an individual who flees a lawful detention or arrest. However, for this ordinance to apply the officer must have had grounds for a lawful investigative (Terry stop) detention with reasonable (articulable) suspicion related to criminal activity. The officer must be able to articulate these circumstances in the police report and in any related court testimony. Further, the officer must be able to articulate the facts that support that the officer communicated, in some fashion, an intent to arrest or detain the person. Examples (not exclusive) of communicating an intent to arrest or detain could be calling to the individual and identifying yourself as a police officer, and telling the individual to stop, and saying “I want to talk to you.” The officer must articulate all the factors and circumstances which justified the Terry stop and/or arrest in the police report and during any subsequent court testimony.