Contact, Detention, and Arrest Thresholds

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What It Is

Every law enforcement encounter with a civilian occupies one of three legal categories, each defined by the degree of restraint imposed on the person and the constitutional standard required to justify it. These categories – consensual contact, investigative detention, and arrest – are not formalities. They define what officers may lawfully do, what evidence is admissible, and what liability attaches to force used at each stage.

In encounters involving edged weapons, the threshold question matters operationally as well as legally: it determines whether the officer has authority to demand compliance, whether the subject has a right to leave, and what level of force is constitutionally available if the subject does not comply.

The Three Thresholds

Consensual Contact

A consensual contact is an encounter in which a reasonable person would feel free to decline the officer's questions and walk away. No Fourth Amendment seizure has occurred. The officer needs no justification – not reasonable suspicion, not probable cause – to approach and speak with a person.

Consensual contacts end the moment the person's freedom of movement is meaningfully constrained. If an officer physically blocks a person's path, retains their identification, or issues commands that a reasonable person would not feel free to ignore, the encounter has become a detention regardless of the officer's characterization of it.

In edged-weapon contexts: An officer who approaches a person carrying a visible knife – legal in most jurisdictions without additional facts – is initially making a consensual contact. The officer may ask questions; the person may decline to answer and leave. The contact becomes a detention when the officer restricts movement or issues commands backed by the implicit or explicit authority to compel compliance.

Investigative Detention (Terry Stop)

An investigative detention – sometimes called a Terry stop after *Terry v. Ohio*, 392 U.S. 1 (1968) – is a brief, limited seizure supported by reasonable suspicion: specific, articulable facts that, taken together with rational inferences, justify a reasonable officer's belief that criminal activity is afoot.

Reasonable suspicion is a low standard, but it is not zero. A hunch, an officer's general unease, or a person's presence in a high-crime area alone does not satisfy it. The officer must be able to articulate specific facts.

A Terry stop authorizes: - A brief stop and temporary restraint of movement. - Questioning (the person still has no obligation to answer). - A pat-down for weapons if the officer has independent reasonable suspicion that the person is armed and dangerous.

It does not authorize a full search, prolonged detention without developing probable cause, or force beyond what is necessary to effectuate the stop and protect officer safety.

Duration. A Terry stop must be temporary and limited to the purpose that justified it. An extended detention that produces no additional information and develops no probable cause becomes unconstitutional under *Illinois v. Caballes* and *Rodriguez v. United States*.

In edged-weapon contexts: A person who is visibly armed in circumstances that suggest a threat – reported threatening behavior, an active dispute, behavior consistent with a predatory approach – may be detained for investigation. The visible weapon alone, in an open-carry jurisdiction, may not be sufficient without additional articulable facts.

Arrest

An arrest is a full custodial seizure requiring probable cause: a reasonable belief, based on specific facts, that the person has committed or is committing a crime. Probable cause is a higher standard than reasonable suspicion and must be based on more than suspicion or possibility.

An arrest authorizes a full search incident to arrest, handcuffing, and transport to custody. It also subjects the officer – and agency – to Fourth Amendment review of both the basis for arrest and the force used to effectuate it.

De facto arrest. An investigative detention can become a de facto arrest – and require probable cause – if its scope or duration exceeds what the initial justification warranted. An officer who arrives, immediately handcuffs a person, and holds them for thirty minutes while investigating has likely effectuated an arrest regardless of whether they used the word.

Threshold Misidentification and Force

Force used during an encounter must be evaluated against the legal threshold the encounter actually occupies, not the threshold the officer believed or asserted.

An officer who uses force to compel compliance during what is legally a consensual contact – where the subject has no obligation to comply – has used force without legal justification even if the subject's behavior was alarming. Courts have consistently held that officers cannot create a seizure through force and then justify the force by pointing to the seizure.

In edged-weapon encounters, this dynamic is most acute at the transition from contact to detention. An officer who: 1. Approaches a person with a knife (consensual contact), 2. Begins issuing commands the person is not legally obligated to obey, 3. Uses or threatens force when the person does not comply,

...has potentially used unjustified force during what remained a consensual contact, absent articulable reasonable suspicion.

The Role of Officer Knowledge

The constitutional analysis turns on what the officer knew – not what was objectively true. An officer who had articulable reasonable suspicion that justified a detention is not liable for that detention even if it later develops that no crime was occurring. Conversely, an officer who lacked reasonable suspicion is not shielded because a crime was in fact occurring.

This means that the articulable basis for each threshold must exist – and be documented – at the time the threshold is crossed, not reconstructed afterward. Officers should be trained to narrate their legal basis to themselves (and on BWC) as they escalate from contact to detention to arrest.

Constitutional Exposure in Force Cases

When force is used in an edged-weapon encounter that ends in injury or death, the threshold question is litigated as part of the Fourth Amendment excessive force analysis:

- Was the seizure itself constitutional (proper threshold)?
- Was the force used to effectuate the seizure objectively reasonable?
- Was the officer's pre-force conduct – particularly unconstitutional restriction of the subject's movement – a cause of the situation that made force necessary?

The third question – officer-created jeopardy through premature or unjustified seizure – has received increasing attention from federal courts following *Torres v. Madrid*, 141 S. Ct. 989 (2021), and subsequent circuit decisions addressing the temporal scope of Fourth Amendment seizures.

Policy Implications

1. Train threshold identification as a real-time skill. Officers should be able to articulate which threshold they are operating under and what additional facts would move them to the next threshold.
2. Document threshold transitions on BWC. Officers who narrate "I'm detaining you because..." or "I have probable cause to arrest because..." create an auditable record that protects both the officer and the subject.

3. Review use-of-force incidents for threshold accuracy. Force review boards should assess not just whether force was proportionate but whether the seizure that required force was legally justified.
4. Address de facto arrest patterns in supervision. Officers who routinely handcuff subjects during what they characterize as investigative detentions should receive supervisory review of whether probable cause existed.

HOW TO CITE

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