

A mugshot of a man with short brown hair and a light beard, wearing an orange inmate jumpsuit. He is holding a black rectangular placard with white text in front of his chest. The background consists of horizontal grey bars. The placard contains the following text from top to bottom: "INMATE NO.", "IDENTIFICATION NUMBER", "DATE OF BIRTH", "AGE", "SEX", "RACE", "HEIGHT", "WEIGHT", "EYES", "HAIR", "SKIN", "FINGERPRINTS", "SIGNATURE", "PHOTOGRAPH".

Criminal Procedure

2026 EDITION

The logo features a yellow shield outline containing the letters "MPI" in bold black font. Below the shield, the words "MUNICIPAL POLICE INSTITUTE" are written in a smaller black sans-serif font.

Written By:
A. Kevin Kennedy, Esq.



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About the Author



Attorney A. Kevin Kennedy

Attorney Kennedy is married to his wife Joanne and they are the proud parents of their four children: Samantha, Kyle, Torrie, and Andrew.

Attorney Kennedy retired after a distinguished career of more than thirty-three years in law enforcement, dedicating thirty-one of those years to the Lincoln, MA Police Department. Throughout his tenure, Attorney Kennedy held various positions, including Patrol Officer, Juvenile Officer, Inspector/Prosecutor, Lieutenant, and most notably, Chief of Police for more than nine years. His career involved direct participation in hundreds of investigations, addressing both violent and non-violent crimes committed by adults and juveniles. His extensive background and experiences have provided Attorney Kennedy with a deep and comprehensive understanding of all aspects of law enforcement.

Attorney Kennedy holds a B.S. in Criminal Justice from Western New England College, a Juris Doctor from the Massachusetts School of Law, and a Certificate in Public Safety Leadership and Management from Suffolk University. Admitted to the Massachusetts Bar in 2005, Attorney Kennedy now imparts his vast knowledge by instructing recruit and veteran police officers across the Commonwealth of Massachusetts on various legal topics.

Chapter 1

Stop & Frisk

There are many types of police interactions with citizens which carry varying levels of constitutional protection. Police officers often engage people on the street in conversation and are encouraged to do so under the community policing philosophy. Simply walking over to a person and engaging them in conversation is not a seizure or detention, it is just a conversation and nothing more, thereby triggering no constitutional protection. **The person talking with the officer has an absolute right to walk away in such an encounter.**

It is important to keep in mind that not all encounters between police and citizens amount to a stop or a seizure in the constitutional sense and not all frisks/searches by police require a search warrant or arrest warrant. In Terry v. Ohio, the United States Supreme Court noted that “encounters between citizens and police officers are incredibly rich in diversity. They range from wholly friendly exchanges of pleasantries or mutually useful information to hostile confrontations of armed men involving arrests, or injuries, or loss of life.”¹

Not every encounter between a law enforcement official and a member of the public constitutes an intrusion of constitutional dimensions that requires justification.² The character of such an encounter will determine what level of justification, if any, is required.

¹ Terry v. Ohio, 392 U.S. 1, 13 (1968).

² Commonwealth v. Narcisse, 457 Mass. 1 (2010).

Thus, police officers may approach individuals on the street to ask them about their business without implicating the balance between State power and individual freedom. Such interactions, field interrogation observations, are properly deemed to be consensual encounters **because the individual approached remains free to terminate the conversation at will**. That is, they are constitutionally insignificant, and a police officer may initiate such an encounter without any information indicating that the individual has been or is presently engaged in criminal activity.³

Threshold Inquiry

Constitutional protection is triggered when police wish to make a threshold inquiry. **In appropriate circumstances, a police officer 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.** This brief detainment of an individual, who may be on foot or in a vehicle, is often referred to as a “Terry Stop.”

In determining whether a juvenile is seized by police during an encounter, the juvenile’s age, when known to the officer or objectively apparent to a reasonable officer, is relevant to the question of whether a seizure has occurred under Article 14. **The question will be whether the officer objectively communicated to a person of the juvenile’s apparent age that the officer would use their police power to coerce the juvenile to stay.**⁴

As it relates to “stop” and “frisk”, citizens are protected by both the **Fourth Amendment** to the United States Constitution and **Article 14** of the Massachusetts Declaration of Rights against unreasonable searches and seizures.

A “**stop**” is the equivalent of a seizure and a “**frisk**” is equivalent to search. Therefore, when police conduct a warrantless stop/seizure or frisk/search of a citizen, the court must determine:

- 1) whether the stop/seizure was permissible under the circumstances,
- 2) whether the scope of the frisk/search was permissible based on the level of suspicion.

³ Id. at 2.

⁴ See Commonwealth v. Evelyn, 485 Mass. 691 (2020).

Chapter 2

Exception to the Warrant Requirement

Introduction

All searches and seizures by Massachusetts police must comply with the Fourth Amendment of the United States Constitution and Article 14 of the Massachusetts Declaration of Rights.

Fourth Amendment	Article 14
“the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the persons or things to be seized.”	“every subject has a right to be secure from all unreasonable searches, and seizures, of his person, his houses, his papers, and all his possessions. All warrants, therefore, are contrary to this right, if the cause or foundation of them be not previously supported by oath or affirmation; and if the order in the warrant to a civil officer, to make search in suspected places, or to arrest one or more suspected persons, or to seize their property, be not accompanied with

Under the Fourth Amendment, the courts analysis on the reasonableness of the search will be based on the “totality of the circumstances.”	a special designation of the persons or objects of search, arrest, or seizure; and no warrant ought to be issued but in cases, and with the formalities prescribed by the laws.” Under Article 14, the court’s analysis on the reasonableness of the search has two aspects: 1) what is the legal standard under which the search will be justified (reasonable suspicion, probable cause, or some other standard), and 2) is a search warrant required in all instances?
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The Fourth Amendment and Article 14 prohibits unreasonable searches and seizures. A court will consider the following in connection with special needs exceptions, such as school searches:

- 1) whether a warrant will be required, or whether a warrantless search is permissible;
- 2) whether the search must be made upon probable cause or upon a lesser standard such as reasonable suspicion;
- 3) whether the suspicion must be particularized to an individual or place, or
- 4) whether particularized suspicion may be **dispensed** with in the circumstances.⁶⁵

⁶⁵ 1 Suppression Matters Under Massachusetts Law § 17-1 (2024).