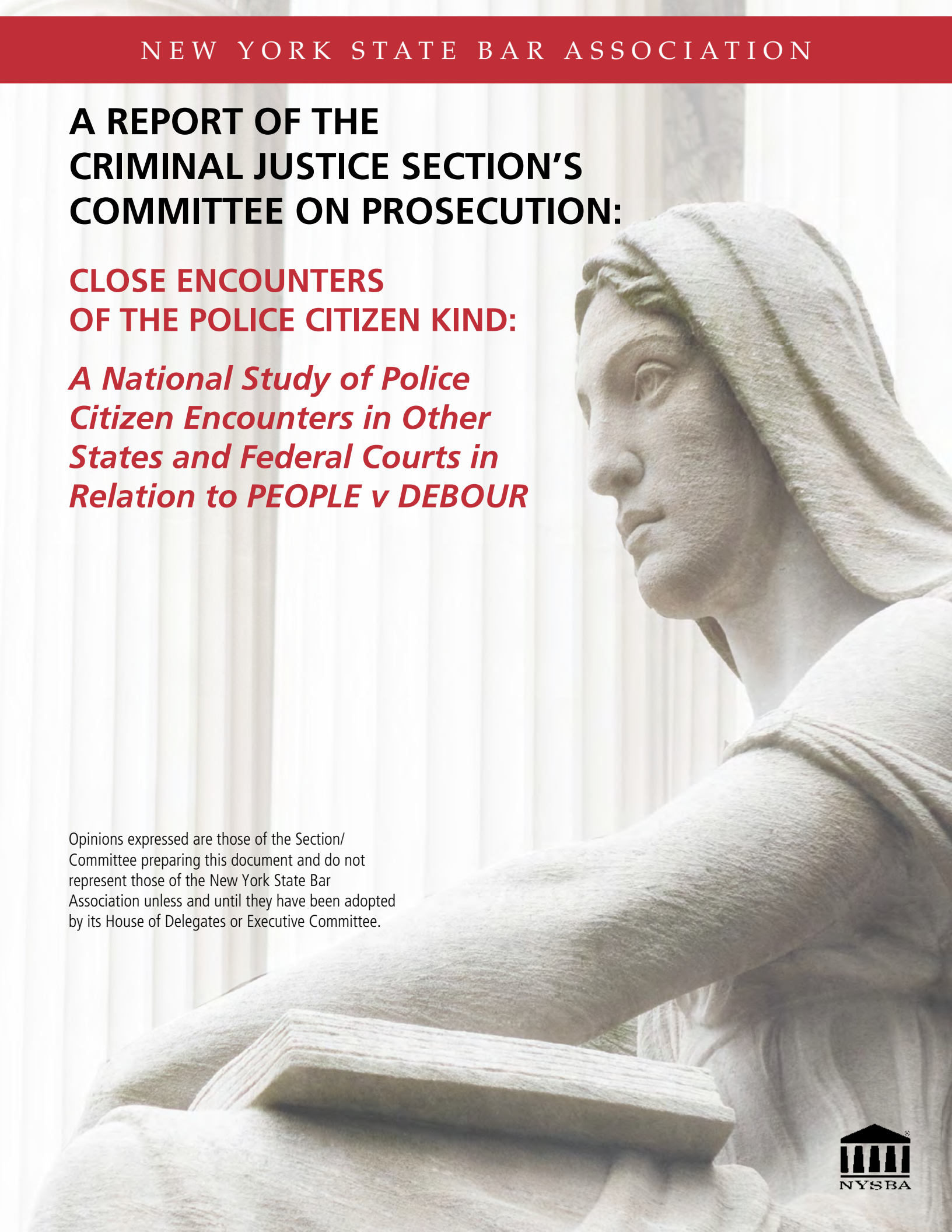
A REPORT OF THE CRIMINAL JUSTICE SECTION'S COMMITTEE ON PROSECUTION:

CLOSE ENCOUNTERS OF THE POLICE CITIZEN KIND:

A National Study of Police Citizen Encounters in Other States and Federal Courts in Relation to PEOPLE v DEBOUR



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A REPORT OF THE CRIMINAL JUSTICE SECTION'S SUB-COMMITTEE ON PROSECUTION:

CLOSE ENCOUNTERS OF THE POLICE CITIZEN KIND:
A NATIONAL STUDY OF
POLICE CITIZEN ENCOUNTERS IN OTHER STATES AND FEDERAL COURTS IN RELATION TO
PEOPLE V. DE BOUR

Abstract:

This Article examines police citizen encounters throughout the country in an effort to better understand New York's *People v. De Bour*, 40 N.Y.2d 210 (1976). The Article is a state and federal law survey that examines whether any state or federal Circuit has formed an express opinion about *De Bour* in case law or statute. The Article lays out the express state and federal rules concerning police citizen encounters and makes a recommendation based on the findings.

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FOREWORD AND ACKNOWLEDGMENTS

As the authors of this Article, members of the New York State Bar Association Criminal Justice Section, and the Prosecution Sub-Committee of the New State Bar Association, we acknowledge that our bias and perspective may not necessarily reflect the attitudes or ideas of all practitioners in the criminal justice field. We therefore invite critique and commentary and encourage our readers to form their own opinions in relation to *De Bour*.

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Sincerely,

The Prosecution Sub-Committee of the New York State Bar Association Criminal Justice Section

John M. Ryan, Prosecution Sub-Committee Chair
Executive Assistant District Attorney, Queens County District Attorney's Office

Natasha R. Pooran, Lead Author and Coordinator
Peter M. Arete, Deputy Author and Coordinator
Michelle A. Tarangello, Author
Priyanka Verma, Researcher

EXECUTIVE SUMMARY

People v. De Bour, 40 N.Y.2d 210 (1976) turned 40 years old on June 15th, 2016.[1] It is a case that affects practically every police civilian encounter in New York. It is a case that has caused many criminal defense attorneys, when arguing a *De Bour* issue to carry an index card listing the four levels of inquiry authorized by *De Bour*. Disagreement among judges over the proper level of *De Bour* and the appropriate police conduct, on a given case became more the rule than the exception.

In *People v. De Bour*, the New York Court of Appeals, for the first time, had to evaluate the most commonplace type of police and citizen interactions: general approaches and inquiries by officers on the street. The Court chose to develop its own model, one which would best maintain the proper balance of police needs and individual rights. This model included low-level intrusions within the scope of constitutional review; however, it required levels of justification less than reasonable suspicion for these intrusions. As a result, this four-tiered model became the standard that would be applied in all police-citizen encounters in New York for the next forty years. In an effort to pierce through the complexities of *People v. De Bour*, this Article seeks to re-evaluate *People v. De Bour* in several ways: by assessing other state and federal models, and by examining statutes and case law examining police-citizen encounters.

Based on our state and federal law survey, no state has decided to follow in *De Bour*'s footsteps. Specifically, twenty-four states (including the District of Columbia) utilize a tiered model in police citizen encounters.[2] Unlike New York, however, of those twenty-four, only two have a four-tiered model, also including the Sixth Circuit.[3] The rest of these states apply a

[1] *See* People v. De Bour, 40 NY.2d 210 (1976).
[2] *See infra* Table I, page 145 (summarizing nation-wide police citizen encounters).
[3] *Id.*

variation of the three levels: consensual or voluntary encounters, investigative detentions, and arrests.

De Bour is exceptionally unique in its ideology, holding that there are Fourth Amendment interests to be protected when in fact, no seizure has occurred; this is in stark contrast with the Supreme Court's Fourth Amendment jurisprudence.[4] The Court's purpose in *De Bour* was to provide clear guidelines for police officers seeking to act lawfully in fast moving street encounters and a cohesive framework for courts reviewing the propriety of police conduct in these situations.[5] However, New York's "unique" approach has been criticized by one of the leading treatises on searches and seizures as likely to result in "such confusion and uncertainty that neither police nor courts can ascertain with any degree of confidence precisely what it takes" to comply with its requirements.[6] It is telling that since *De Bour* was decided forty years ago, not a single state has decided to adopt it. Other states seem to implicitly reject *De Bour*'s framework, relying on the average three-tiered system of non-seizure encounter requiring no grounds, reasonable suspicion to stop and frisk, and probable cause to arrest.

Much of the confusion in *De Bour* stems from the first two levels: level one, the right to approach and request information and level two, the common law right to inquire. Prosecutors, defense attorneys and judges have had great difficulty in distinguishing these two levels. Professor LaFave, a leading expert in this area comments that *De Bour* assumes that courts will develop and police will apply three separate and distinct evidentiary standards below probable cause for arrest—an "objective credible reason," which is less than "a founded suspicion," which

[4] See United States v. Mendenhall, 446 U.S. 544, 554 (1980); *see also* United States v. Berry, 670 F.2d 583, 591 (5th Cir.1982) (finding that the Supreme Court holdings sculpt out, at least theoretically, three-tiers of police citizen encounters: communication between police and citizens involving no coercion or detention and therefore without the compass of the Fourth Amendment, brief 'seizures' that must be supported by reasonable suspicion, and full-scale arrests that must be supported by probable cause).
[5] *See generally* People v. Moore, 6 N.Y.3d 496 (2006).
[6] 4 WAYNE R. LAFAVE, SEARCH AND SEIZURE § 9.4(E) AT 466, 468–469 (4th ed. 2004).

in turn is less than "a reasonable suspicion." Adding to the confusion, other states use the terms "founded suspicion" and "reasonable suspicion" interchangeably.[7]

The question then becomes whether *De Bour* is really in the public interest. If prosecutors, defense attorneys, and judges alike remain confounded by the intricacies of *De Bour*, then it stands to reason that the police officers who are expected to follow the guidelines of *De Bour* during the course of their official law enforcement and public service duties are going to be confounded by the tiered levels as well. This confusion will lead officers to ignore these tiers during high stress situations and that will be detrimental to all parties involved: police officers, prosecutors, defense attorneys, judges, and the very citizens that *De Bour* is designed to protect. In light of the state and federal findings, *De Bour* makes New York the national outlier, possibly making it more trouble than it is worth and should thus be re-evaluated.

[7] *See infra*, notes 144–46.

CLOSE ENCOUNTERS OF THE POLICE CITIZEN KIND: A STUDY OF *STATEWIDE AND FEDERAL POLICE CITIZEN ENCOUNTERS IN RELATION TO PEOPLE V. DE BOUR*

Q: Do you teach De Bour?

A: Yes ... well no it is unteachable. We teach officer survival.[8]

"Consequently, as a matter of State common law, we will continue to apply De Bour to assess the propriety of encounters that do not rise to the level of a seizure for purposes of the Fourth Amendment."

-People v. Hollman[9]

I. INTRODUCTION

People v. De Bour, 40 N.Y.2d 210 (1976) turned 40 years old on June 15th, 2016.[10] It is a case that affects practically every police civilian encounter in New York. It is a case that has caused many criminal defense attorneys, when arguing *De Bour*, to carry an index card listing the four levels of inquiry authorized by *De Bour*. Disagreement among judges over the proper level of *De Bour* and the appropriate police conduct on a given case became more the rule than the exception.[11]

In *People v. De Bour*, the New York Court of Appeals, for the first time, had to evaluate the most commonplace type of police and citizen interactions: general approaches and inquiries

[8] This conversation occurred approximately in the late 1990's between the then Chief of Training at the NYPD Police Academy and a career prosecutor and member of the Criminal Justice Section. The prosecutor had been asked to participate in a law school panel discussion on *De Bour* and the conversation was part of the preparation for the panel.
[9] People v. Hollman, 79 N.Y.2d 181, 196 (1992).
[10] *See* People v. De Bour, 40 NY.2d 210 (1976).
[11] This is the personal experience of the authors.

by officers on the street.[12] The Court had to balance whether these intrusions should not be subject to any constitutional scrutiny or whether these intrusions should be held to a reasonable suspicion standard.[13] However, the Court believed that the former would permit too much police discretion and would not adequately protect the privacy rights of citizens, while the Court believed that the latter would undermine attempts by police to carry out their multiple duties, thus hindering their efforts at crime prevention and detection.[14] Moreover, the Court was concerned that the reasonable suspicion standard would be too stringent for many police citizen encounters, leading to an abridgment of individual rights.[15]

Rejecting these two alternatives, the Court, instead, chose to develop its own model, one which would best maintain the proper balance of law enforcement needs and individual rights. This model included low-level intrusions within the scope of constitutional review; however, it also required two levels below the reasonable suspicion standard.[16] As the Court wrote: "[t]he basic purpose of the constitutional protections against unlawful searches and seizures is to safeguard the privacy and security of each and every person against all arbitrary intrusions by government. Therefore, any time an intrusion on the security and privacy of the individual is undertaken with intent to harass or is based upon mere whim, caprice or idle curiosity, the spirit of the Constitution has been violated."[17]

As a result, this four-tiered model then became the standard that has been applied in all police citizen encounters in New York for the next forty years. In an effort to pierce through the complexities *De Bour*, this Article seeks to re-evaluate the decision in several ways: by assessing

[12] *See generally De Bour*, 40 N.Y.2d.
[13] *Id*.
[14] *Id*.
[15] *Id*.
[16] *Id*.
[17] *Id*. at 217.

other state and federal models, and by examining statutes and case law examining police citizen encounters.

A. *People v. De Bour*

Facts

At 12:15 a.m. on the morning of October 15, 1972, Kenneth Steck, a police officer assigned to the Tactical Patrol Force of the New York Police Department, was assigned to patrol by foot a certain section of Brooklyn with his partner. While walking his beat on a street illuminated by ordinary street lamps and devoid of pedestrian traffic, he and his partner noticed someone walking on the same side of the street in their direction. When the solitary figure of the defendant, Louis De Bour, was within 30 or 40 feet of the uniformed officers he crossed the street. The two policemen followed suit and when De Bour reached them Officer Steck inquired as to what he was doing in the neighborhood. De Bour, clearly but nervously, answered that he had just parked his car and was going to a friend's house.

The patrolman then asked De Bour for identification. As he was answering that he had none, Officer Steck noticed a slight waist-high bulge in defendant's jacket. At this point the policeman asked De Bour to unzip his coat. When De Bour complied with this request Officer Steck observed a revolver protruding from his waistband. The loaded weapon was removed from behind his waistband and he was arrested for possession of the gun.

Holding

This case raised the fundamental issue of whether or not a police officer, in the absence of any concrete indication of criminality, could approach a private citizen on the street for the

purpose of requesting information. The Court of Appeals said yes and created the four levels of police citizen encounters in New York:[18]

Level 1 - Request for Information

As long as a police officer has an objectively credible basis to approach an individual, even if it is not indicative of criminality, the officer may ask the individual for information. The officer may not stop, detain, search or frisk the individual.[19]

Level 2 - Common Law Right of Inquiry

Once a police officer has a founded suspicion as to some level of criminal activity, the officer may undertake a formal inquiry of the person. The officer may request permission to search the individual, but the officer is not permitted to forcibly detain or pursue the individual and the individual remains free to leave.[20]

Level 3 - Reasonable Suspicion to Stop

An officer can forcibly stop, detain and pursue a person when the officer has reasonable suspicion that the person has committed, is committing, or is about to commit a felony or misdemeanor. In addition, if the officer has a reasonable belief that the individual is armed and dangerous, the officer can conduct a frisk.[21]

Level 4 - Probable Cause to Arrest

Probable cause is information sufficient to warrant a person of reasonable caution in the belief that the defendant has committed a crime, or that the fruits, evidence or instrumentalities of crime can be found at a given location. If a police officer has probable cause with respect to an

[18] *See generally* People v. De Bour, 40 N.Y.2d 210 (1976).
[19] *Id.*
[20] *Id.*
[21] *Id.*; *See also* Terry v. Ohio, 392 U.S. 1 (1968).

individual, the officer may arrest that person on the street without an arrest warrant and may search the individual incident to arrest without a search warrant.[22]

B. *PEOPLE V. HOLLMAN*

In 1992, the Court of Appeals addressed the vast confusion regarding the differences between levels one and two of *De Bour*. The Court noted that a lot of the confusion stemmed from the similarity between the terms.[23] For that reason, the Court specified that a request for information is a general, non-threatening encounter in which an individual is approached for an articulable reason and asked briefly about his or her identity, destination, or reason for being in the area.[24] An officer can also ask about anything unusual that the individual carries. Once the officer's questions become "extended and accusatory," and the officer's questions focus on the "possible criminality of the person approached," giving the individual a reasonable belief that he or she is a suspect of wrongdoing, the encounter has become a common-law inquiry that must be supported by a founded suspicion that criminal activity is afoot.[25] Despite acknowledging that the distinction between the levels is a subtle one, the Court nevertheless decided that they would not purport a bright-line test for distinguishing the two levels, but rather must be determined on a case-by-case basis.[26]

Another issue the Court addressed was the People's contention that in light of the recent Fourth Amendment cases decided by the Supreme Court holding that there are situations not

[22] *Id.*
[23] People v. Hollman, 79 N.Y.2d 181, 188 (1992).
[24] *Id.* at 191.
[25] *Id.*
[26] *Id.* at 192.

amounting to seizures and thus not protected by the Fourth Amendment,[27] the People argued that *De Bour* was in conflict with the Supreme Court and asked for the opinion to be overturned. The Court, however, stated that *De Bour* was the culmination of State common law and the New York Constitution, holding that in their judgment, "encounters that fall short of Fourth Amendment seizures still implicate the privacy interests of all citizens and that the spirit underlying those words required the adoption of a State common-law method to protect the individual from arbitrary or intimidating police contact."[28]

C. *People v. Garcia*

In 2012, the Court in *People v. Garcia* extended the *De Bour* framework to include traffic stops.[29] In that case, the vehicle was stopped for having a defective brake light. The court followed the reasoning of the lower courts that have characterized a police officers inquiry as to whether an individual has a weapon as a common-law question requiring founded suspicion of criminality.[30] The court held that even though a police officer may order the occupants to step out of a stopped vehicle[31], "a police officer who asks a private citizen if he or she is in possession of a weapon must have founded suspicion that criminality is afoot" on penalty of suppression.[32]

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[27] United States v. Mendenhall, 446 U.S. 544, 554 (1980) (A person has been 'seized' within the meaning of the Fourth Amendment only if, in view of all the circumstances surrounding the incident, a reasonable person would have believed that he was not free to leave); *see also* Michigan v. Chesternut, 486 U.S. 567, 573 (1988); *see also* Immigration and Naturalization Serv. v. Delgado, 466 U.S. 210, 215 (1984); *see also* Florida v. Royer, 460 U.S. 491, 502 (1983).
[28] *Hollman*, 79 N.Y.2d at 195
[29] People v. Garcia, 20 N.Y.3d 317, 319 (2012).
[30] *Id*. at 322.
[31] *See* People v. Robinson, 74 N.Y.2d 773, 775 (1989).
[32] *Garcia*, 20 N.Y.3d at 324.

D. *Terry v. Ohio*

The landmark case, *Terry v. Ohio*, was a decision by the United States Supreme Court which held that the Fourth Amendment prohibition on unreasonable searches and seizures is not violated when a police officer stops a suspect on the street and frisks him or her without probable cause to arrest, if the police officer has a reasonable suspicion that the person has committed, is committing, or is about to commit a crime and has a reasonable belief that the person "may be armed and presently dangerous."[33]

For the officers' protection, police may perform a quick surface search of the person's outer clothing for weapons if they have reasonable suspicion that the person stopped is armed.[34] This reasonable suspicion must be based on "specific and articulable facts" and not merely upon an officer's hunch. This permitted police action has subsequently been referred to in short as a "stop and frisk," or more commonly known as a "Terry frisk."[35] The Terry standard was later extended to temporary detentions of persons in vehicles, known as traffic stops.[36]

III. RESEARCH AND FINDINGS

ALABAMA

Summary:

Alabama has no delineated tiers of police-citizen interaction.

There is no mention of *De Bour* in case law or opinion.

Fourth Amendment Not Triggered

[33] *See generally* Terry v. Ohio, 392 U.S. 1 (1968).
[34] *Id*.
[35] *Id*.
[36] *Id*.

The governmental interest which allows official intrusion upon a private citizen's fourth amendment rights is that of effective law enforcement. The individual citizen is protected against unreasonable searches and seizures. However, in certain situations, not only is an invasive stop reasonable, but is merely a minor inconvenience and a petty indignity compared to the government's greater interest in crime prevention and detection. [37]

A peace officer may in appropriate circumstances and in an appropriate manner approach or accost a person for the purposes of investigating possible criminal behavior even though there is no probable cause to make an arrest. A policeman who lacks the precise level of information necessary for probable cause to arrest is not required simply to shrug his shoulders and allow a crime to occur or a criminal to escape, and a brief stop of a suspicious individual, in order to determine his identity or to maintain the status quo momentarily while obtaining more information, may be most reasonable in light of the facts known to the officer at the time. [38]

Investigative Stop – Reasonable Suspicion

The reasonable, articulable suspicion necessary to justify an investigatory stop may be supplied by information from citizen-informants. [39]

Police may constitutionally detain an individual for brief periods of questioning on a reasonable suspicion, based on objective facts, that the individual is involved in criminal activity.[40]

The standard of reasonable suspicion employed in stop and frisk instances, because of the minimally intrusive nature of the procedure contemplated, justifies a limited stop upon facts which demonstrate something less than full probable cause for arrest. [41]

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[37] Sterling v. State, 421 So. 2d 1375, 1379 (1982).
[38] Spradley v. State, 414 So. 2d 170, 173 (1982).
[39] Key v. State, 566 So. 2d 251, 253 (1990).
[40] Vaughn v. State, 473 So. 2d 661, 663 (1985).

In justifying the particular intrusion, the 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 appropriate question to ask is whether facts available to officer at moment of the seizure or search warrant a man of reasonable caution in the belief that the action taken was appropriate.[42]

In order to be valid, an investigatory stopping or detention must be justified by specific and articulable facts which, taken together with rational inference from those facts, reasonably warrant the intrusion. The detention and investigation may not be based on a peace officer's unsupported intuition, subjective feelings or suspicion, mere hunch, or good faith, but it must be based on the objective perception of events, without particularization as to a specific crime. There must be a rational suspicion on the part of the officer that some activity out of the ordinary is taking or has taken place, some indication to connect the person under suspicion with such activity, and some suggestion that the activity is related to a crime. [43]

Reasonable cause for a stop and frisk need not be based only on an officer's personal observation. Information from citizen-informants may supply the necessary reasonable suspicion. [44]

The arresting officer may base his arrest on an official description of the suspect or his motor vehicle as where he receives information from a police radio bulletin or report describing the person or vehicle. The identification or description of an offender or a motor vehicle may

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[41] Fowler v. State, 453 So. 2d 1089, 1091 (1984).
[42] *Sterling*, 421 So. 2d at 1379.
[43] *Spradley*, 414 So. 2d at 173.
[44] Crawley v. State, 440 So. 2d 1148, 1150 (1983).

also be supplied to the police by the victim of or witness to an offense as well as by an informer.[45]

In stop and frisk situations, courts have used a balancing test in determining the reasonableness of police conduct. The necessity of the stop and seizure must be viewed in light of the particular invasion which the stop and seizure involves. [46]

Courts have used a variety of terms to capture the elusive concept of what cause is sufficient to authorize police to stop a person. Terms like articulable reasons and founded suspicion are not self-defining; they fall short of providing clear guidance dispositive of the myriad factual situations that arise. But the essence of all that has been written is that the totality of the circumstances—the whole picture—must be taken into account. Based upon that whole picture the detaining officers must have a particularized and objective basis for suspecting the particular person stopped of criminal activity. [47]

Under the authority of this section, a police officer has the authority to stop and question a person for investigatory purposes even though the circumstances that prompted the officer to detain the individual fall short of the probable cause requirement under §15-10-3.[48]

A policeman who lacks the precise level of information necessary for probable cause to arrest is not required simply to shrug his shoulders and allow a crime to occur or a criminal to escape, and a brief stop of a suspicious individual, in order to determine his identity or to maintain the status quo momentarily while obtaining more information, may be most reasonable in the light of the facts known to the officer at the time.[49]

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[45] Traylor v. State, 439 So. 2d 178, 182 (1983).
[46] Sterling v. State, 421 So. 2d 1375, 1378 (1982).
[47] Spradley v. State, 414 So .2d 170, 174 (1982).
[48] *Id.*; Scurlock v. State, 487 So. 2d 286, 289 (1986).
[49] *Crawley*, 440 So. 2d at 1150.

While the officer making the stop is not required to possess a level of knowledge amounting to probable cause, he must be able to point to specific and articulable facts which, taken together with rational inferences from those facts reasonably warrant investigating.[50]

A police officer may stop someone to investigate possible criminal behavior even though there is no probable cause to make an arrest. [51]

Probable Cause to Arrest

Probable cause to arrest must exist at the time of the actual arrest.[52]

ALASKA

Summary:

Alaska has no delineated tiers of police-citizen interaction.

Courts in Alaska have one negative mention of *De Bour*: *State v. Smith*, No. A-435, 1985 WL 1078021, *2 (1985).[53]

Fourth Amendment Not Triggered

A police officer can approach a private citizen and direct questions to that person without turning the encounter into an investigative stop.[54]

Not all encounters between the police and private citizens are investigative stops amounting to seizures for Fourth Amendment purposes.[55]

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[50] Kemp v. State, 434 So. 2d 298, 301 (1983).
[51] *Spradley*, 414 So. 2d at 173.
[52] State v. Hanson, 480 So. 2d 620, 623 (1985).
[53] "Our decision in *Howard v. State*, 664 P.2d 603 (1983), and the [Alaskan] supreme court's decision in *Waring v. State*, 670 P.2d 357 (1983), implicitly reject the reasoning of *People v. De Bour*. As long as an officer is in a place where he has a legal right to be, he may put questions to anyone present there without violating the Fourth amendment to the United States Constitution and Article I, sections 6 and 22 of the Alaska Constitution, unless his words and conduct constitute a seizure of the person addressed."
[54] Adams v. State of Alaska, 103 P.3d 908, 910 (2004).
[55] Waring v. State, 670 P.2d 357, 363 (1983).

A consensual encounter does not become an investigative stop even if the officer searches the body or property of the person, if they consent to the search, and a reasonable person in their position would conclude that they were free to terminate the encounter and walk away.[56]

For Fourth Amendment purposes, a seizure occurs whenever a police officer engages in a show of official authority such that a reasonable person would believe that he or she was not free to leave.[57]

Investigative Stop, Reasonable Suspicion

In Alaska, an investigative stop must be supported by reasonable suspicion that imminent public danger exists or that serious harm to persons or property has recently occurred. A reasonable suspicion is one that has an articulable basis in the totality of the circumstances known to the officer.[58]

In determining the validity of an officer's investigative stop, a balancing test is used to weigh the seriousness of the offense, the necessity for the stop, and the imminence of the threat to public safety; these factors must in turn be balanced against the strength of an officer's reasonable suspicion and the actual intrusiveness of the investigative stop.[59]

A citizen has been restrained by the police only when a reasonably prudent person who is innocent of any crime would treat the police officer's actions as indicating an intent to restrain or confine the person, considering all the circumstances.[60]

Probable Cause to Arrest

[56] Wright v. State, 795 P.2d 812, 815 (1990).
[57] Castle v. State, 999 P.2d 169, 171 (2000).
[58] Dimascio v. Anchorage, 813 P.2d 696, 698 (1991).
[59] *Adams*, 103 P.3d at 910.
[60] *Id.*

In distinguishing between an investigatory stop on reasonable suspicion and a custodial arrest requiring probable cause, the Court must consider the purpose for the stop, and specifically, the kind of criminal activity being investigated.[61]

Drawn guns and handcuffing by police do not necessarily turn a stop on reasonable suspicion into an arrest requiring probable cause.[62]

ARIZONA

Summary:

Arizona has no delineated tiers of police-citizen interaction.

There is no mention of *De Bour* in case law or opinion.

Fourth Amendment Not Triggered

A police officer may approach an individual and ask questions without running afoul of the Fourth Amendment. "So long as a reasonable person would feel free to disregard the police and go about his business, the encounter is consensual and no reasonable suspicion is required."[63]

Law enforcement officers do not violate the Fourth Amendment by merely approaching an individual on the street or in another public place and asking them if they are willing to answer some questions.[64]

Police officers may lawfully, without reasonable suspicion, approach a home's front door to conduct a consensual inquiry of a resident.[65]

"The encounter will not trigger Fourth Amendment scrutiny unless it loses its consensual nature."[66]

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[61] Howard v. State, 664 P.2d 603, 609 (1983).
[62] *Id*. at 609.
[63] State v. Serna, 331 P.3d 405, 407 (2014) (quoting California v. Hodari D., 499 U.S. 621, 628 (1991)).
[64] State v. Wyman, 3 P.3d 392, 395 (2000).
[65] Baker v. Clover, 864 P.2d 1069, 1071 (1993).

Police officers are thus free to ask questions of persons they encounter "as long as the police do not convey a message that compliance with their requests is required."[67]

Investigative Stop – Reasonable Suspicion

Whether an officer must possess reasonable suspicion that criminal activity is afoot in order to frisk an individual is a question of law, which is reviewed de novo.[68]

Articulating precisely what 'reasonable suspicion' ….means is not possible. It is a commonsense, nontechnical concept that deals with the factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians, act.[69]

Police interactions with members of the public are inherently fluid, and what begins as a consensual encounter can evolve into a seizure that prompts Fourth Amendment scrutiny.[70]

Officers may not involuntarily detain individuals even momentarily without reasonable, objective grounds for doing so.[71]

Police officers may not place their hands on citizens in search of anything without constitutionally adequate, reasonable grounds for doing so. Thus a pat down is unquestionably a search covered by the Fourth Amendment.[72]

Probable Cause to Arrest

A seizure of a person occurs only when the officer, by means of physical force or show of authority, has in some way restrained the liberty of a citizen.[73]

ARKANSAS

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[66] *Serna*, 331 P.3d at 407.
[67] *Id*.
[68] State v. Moody, 94 P.3d 1119, 1140 (2004).
[69] State v. Rogers, 924 P.2d 1027, 1029 (1996).
[70] Commonwealth v. Narcisse, 927 N.E.2d 439, 443 (2010).
[71] State v. Serna, 331 P.3d 405, 408 (2014) (quoting Florida v. Royer, 460 U.S. 491, 498 (1983)).
[72] In re Ilono H., 113 P.3d 696, 699 (2005) (quoting Leveto v. Lapina, 258 F.3d 156, 163 (3d Cir. 2001)).
[73] *Rogers*, 924 P.2d at 1030.

Summary:

There are two cases that cite *De Bour*: *State v. McFadden*, 938 S.W.2d 797, 799 (1997)[74]; and *Baxter v. State*, 626 S.W.2d 935, 937 (1982).[75]

Arkansas has no delineated tiers of police citizen encounters:[76]

1. Consensual encounters

2. Investigative Stops

3. Arrest

Consensual Encounter

Because the encounter between a person and an officer who requests information from the person in the investigation of a crime is in a public place and is consensual, it does not constitute a seizure within the meaning of the Fourth Amendment; but if an officer restrains the liberty of a person by means of physical force or show of authority, the encounter ceases to be consensual and becomes a seizure.[77]

An encounter between a law enforcement officer, and a person who the officer approaches on a street and asks if he is willing to answer some questions, is not a "seizure" for Fourth Amendment purposes, because the encounter is a consensual encounter in a public place.[78]

Investigative Stop

[74] The approach of a citizen pursuant to a policeman's investigative law enforcement function must be reasonable under the existent circumstances and requires a weighing of the government's interest for the intrusion against the individual's right to privacy and personal freedom. To be considered are the manner and intensity of the interference, the gravity of the crime involved, and the circumstances attending the encounter. People v. De Bour, 40 N.Y.2d 210, 219 (1976).

[75] The approach of a citizen pursuant to a policeman's investigative law enforcement function must be reasonable under the existent circumstances and requires a weighing of the government's interest for the intrusion against the individual's right to privacy and personal freedom. To be considered are the manner and intensity of the interference, the gravity of the crime involved, and the circumstances attending the encounter. People v. De Bour, 40 N.Y.2d 210, 219 (1976).

[76] Frette v. City of Springdale, 959 S.W.2d 734, 736 (1998).

[77] Medlock v. State, 493 S.W.3d 789, 797 (2016).

[78] Cockrell v. State, 369 S.W.3d 19, 24 (2009).

Whether there is reasonable suspicion of criminal activity to stop and detain a person depends on whether, under the totality of the circumstances, the police have specific, particularized, and articulable reasons indicating the person may be involved in criminal activity.[79]

Justification for investigative stop depends upon whether, under totality of circumstances, police have specific, particularized and articulable reasons indicating person or vehicle may be involved in criminal activity.[80]

Probable Cause to Arrest

"Probable cause" for an arrest exists when there is reasonably trustworthy information within law enforcement's knowledge that would lead a person of reasonable caution to believe that a felony was committed by person detained.[81]

CALIFORNIA

Summary:

There are three levels of police citizen encounters in California:

1. Voluntary / Consensual Encounter
2. Detention
3. Seizure

California categorizes police-citizen encounters from most the least intrusive encounter to the most intrusive encounter based on the level of restraint.[82]

There is no mention of *De Bour* in case law or opinion.

Voluntary/Consensual Encounters

[79] MacKintrust v. State, 479 S.W.3d 14, 18 (2016).
[80] Frette v. City of Springdale, 959 S.W.2d 734, 737 (1998).
[81] State v. Bell, 948 S.W.2d 557, 561 (1997).
[82] Wilson v. Superior Court, 670 P.2d 325, 325 (1983).

Consensual encounters are defined as police-citizen interactions that do not result in the "restraint of an individual's personal liberty whatsoever."[83]

The following are considered a consensual encounter: approaching an individual in a public place, asking an individual if they will answer questions, asking if the individual is willing to listen to the officers, identifying themselves as officers, and asking to see identification and or documentation.[84]

Consensual encounters are not considered to be a seizure under the Fourth Amendment, and do not implicate the Fourth Amendment.[85] These types of encounters can be denied by an individual and such denial cannot be the basis of a detention.

Officers can engage citizens to obtain the individual's identity without conducting a detention.[86]

Officers are not permitted to conduct searches incident to a consensual encounter unless the officers can establish reasonable suspicion for the search.[87]

Detentions – Reasonable suspicion

Even though *Terry v. Ohio* was decided after California's creation of "temporary detention" it too uses the reasonableness standard used to conduct a temporary detention.[88]

Detentions are defined as a seizure, but, "strictly limited in duration, scope, and purpose;" detentions must be supported by an articulable suspicion that the individual in question has committed or is about to commit a crime.[89]

[83] People v. Jones, 279 Cal. Rptr. 56, 57 (1991).
[84] *Wilson*, 670 P.2d at 328–29, 332.
[85] People v. Zamudio, 181 P.3d 105, 119 (2008).
[86] People v. Simon, 290 P.2d 531, 531 (1955).
[87] *See generally* People v. Gonzales, 164 Cal. Rptr. 74 (1985).
[88] People v. Mickelson, 380 P.2d 658, 660 (1963).
[89] People v. Jones, 228 Cal. Rptr. 56, 58 (1991).

To determine if a detention has occurred California utilizes the *United States v. Mendenhall* reasonable person test to determine if a reasonable person in same or similar circumstances would have felt free to leave.[90]

A temporary detention under California law is the same as a *Terry* stop and requires a showing of reasonable suspicion. A consensual encounter can be the basis of a temporary detention or arrest based on the totality of the circumstances.[91]

Seizure

A seizure occurs when the original seizure goes beyond the prescribed limits of detention and includes formal arrests and restraints of a person's liberty. Seizures must be supported by probable cause.[92]

COLORADO

Summary:

Colorado has three levels of police-citizen encounters:

1. Arrests
2. Investigatory Stops
3. Consensual interviews/encounters.

There are two cases that cite to *De Bour*: *People v. Davis*, 565 P.2d 1347, 1350 (1977)[93]; and *People v. Figueroa*, 592 P.2d 19, 20 (1979).[94]

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[90] *See generally* United States v. Mendenhall, 446 U.S. 554 (1980).
[91] *See Mickelson*, 59 Cal. 2d. at 451.
[92] *Jones*, 228 Cal. Rptr. at 58.
[93] "The first condition to be met in situations other than those which concern investigation of criminal activity is whether there is a bona fide reason, related to functions within the scope of the police officer's authority and duties, for the encounter of a party. *See People v. De Bour*, 40 N.Y.2d 210, 216 (1976). *De Bour* recognizes that contacts not based on suspicion of criminal activity are permissible when there is an articulable reason for the encounter."
[94] "Here, the combination of the existence of the ostensibly valid search warrant, and defendant's presence in the driveway which led to the private house described in the warrant, was sufficient to justify the officers' limited intrusion of asking defendant to identify himself. The intrusion was brief and involved no forcible seizure.

Consensual Encounters – No Suspicion

Encounters that fall short of being an investigatory stop or a seizure do not warrant Fourth Amendment Protections.[95]

A consensual encounter or interview includes: asking an individual general or specific questions, ask for identification, or request consent to search.[96]

Consensual encounters do not restrain the liberties of individuals.[97] However, a consensual encounter can rise to the level of an investigatory stop if at any time the individual no longer feels free to leave under the totality of the circumstances.[98]

To determine if an encounter was "consensual" the court will look at a number of factors: display of authority, number of officers, weapons, tone of voice, physical conduct, ability to terminate the encounter, length of the encounter.[99]

Investigatory Stop – Reasonable Suspicion

Colorado requires officers to have "reasonable suspicion that criminal activity has occurred, is taking place, or is about to occur,"[100] to perform an investigatory stop pursuant to *Terry v. Ohio*.[101]

An officer may conduct a protective pat-down search for weapons if s/he has reasonable suspicion to believe that the person may be carrying a weapon.[102]

Additionally, in Colorado *Terry* Stops are referred to as "Stone" stops. Colorado requires that an officer must have "a reasonable suspicion that the individual has committed, or is about

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Furthermore, there is no indication in the record of any harassment or intimidation. *Cf. People v. De Bour*, 40 N.Y.2d 210, 220 (1976). In these circumstances, we conclude that the officers' conduct was not unreasonable."

[95] People v. Scheffer, 224 P.3d 279, 284 (2009).
[96] *Id.* (citing Florida v. Bostick, 501 U.S. 429, 437 (1991)).
[97] People v. Trujillo, 733 P.2d 1086, 1089 (1989).
[98] People v. Coleman, 55 P.3d 817, 820 (2002).
[99] *Scheffer*, 224 P.3d at 285.
[100] People v. Funez-Paiagua, 276 P.3d 576, 578 (2012).
[101] *See* Terry v. Ohio, 392 U.S. 1 (1968).
[102] *See* People v. Ratcliff, 778 P.2d 1371 (1989).

to commit, a crime; the purpose of the detention must be reasonable; and the character of the detention must be reasonable when considered in the light of the purpose."[103]

In determining the reasonableness of the of the stop the "nature and extent of the governmental interests involved in effecting the stop must be balanced against the affected individual's constitutional protection from unreasonable searches and seizures."[104]

The courts must determine under the totality of the circumstances whether the investigatory stop was valid.[105]

Arrest – Probable Cause

Colorado applies the reasonableness test from *United States v. Mendenhall* to determine when a seizure has occurred.[106]

When determining whether an arrest has occurred the following factors are considered: time, place and purpose of the encounter, the words used by the officer, the officer's tone and behavior, etc.[107]

CONNECTICUT

Summary:

Connecticut has no delineated tiers of police citizen interactions.

There is no mention of *De Bour* in case law or opinion.

Fourth Amendment Not Triggered – No Suspicion

Not all personal intercourse between the police and citizens involves seizures of persons; law enforcement officers must be free to engage in healthy, mutually beneficial intercourse with the public.[108]

[103] Stone v. People, 485 P.2d 495, 497 (1971).
[104] People v. Bell, 698 P.2d 269, 272 (1985) (citing People v. Smith, 620 P.2d 232, 235 (1980)).
[105] People v. Thomas, 660 P.2d 1272, 1274 (1983).
[106] United States v. Mendenhall, 446 U.S. 544, 550 (1980).
[107] People v. Johnson, 671 P.2d 958, 962 (1983).

Investigative Stop – Reasonable Suspicion – Terry

When considering the validity of a Terry stop, appellate courts must determine at what point, if any, did the encounter between the police officers and the defendant constitute an investigatory stop or seizure, and if appellate courts conclude that there was such a seizure, appellate courts must then determine whether the police officers possessed a reasonable and articulable suspicion at the time the seizure occurred.[109]

Terry stop is constitutionally permissible only if three conditions are met: (1) the officer must have a reasonable suspicion that a crime has occurred, is occurring, or is about to occur; (2) the purpose of the stop must be reasonable; and (3) the scope and character of the detention must be reasonable when considered in light of its purpose.[110]

For an officer's suspicion of criminal activity to be objectively reasonable, so as to justify stop, the officer must be able to point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion.[111]

Probable Cause to Arrest

With respect to warrantless arrests, the trial court, in determining whether the arrest is supported by probable cause, is required to make a practical, nontechnical decision whether, under all the circumstances there is a fair probability that the defendant had committed or was committing a felony.[112]

DISTRICT OF COLUMBIA

Summary:

The District of Columbia has three categories of police-citizen encounters.

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[108] State v. Edmonds, 145 A.3d 861, 872 (2016).
[109] *Id*. at 871.
[110] *Id*. at 872.
[111] *Id*. at 881.
[112] State v. Houghtaling, 111 A.3d 931, 951 (2015).

1. Consensual Encounter[113]

2. Investigative Stop[114]

3. Arrest[115]

There are three cases that mention *De Bour*: *United States v. Johnson*, 540 A.2d 1090, 1098 (1988)[116]; *In re J.G.J.*, 388 A.2d 472, 476 (1978)[117]; *Little v. United States*, 393 A.2d 94, 96 (1978).[118]

Consensual Encounters – No Suspicion

Consensual encounters are not protected by the Fourth Amendment and do not require any level of suspicion.[119]

A police-citizen encounter is not protected by the Fourth Amendment if the officer approaches an individual and asks questions, ask an individual to do something, or produce identification.[120]

Investigative Stops – Reasonable Suspicion

[113] United States v. Maragh, 894 F.2d 415, 418 (1990).
[114] United States v. Goddard, 491 F.3d 457, 461 (2007).
[115] *Id.* at 467.
[116] "In reference to an uncorroborated anonymous telephone tip, that identified a description of a car parked at a certain location:" LaFave cites numerous cases which illustrate the tendency of the state courts to hold unreasonable, because of inadequate corroboration, stops based upon an anonymous tip: People v. De Bour, 352 N.E.2d 562 (1976) (anonymous call that black man in bar with red shirt had gun; court says anonymous tips "are of the weakest sort since no one can be held accountable if the information is in fact false.").
[117] The New York Court of Appeals has rejected the argument that a police officer's mere questioning of a person constitutes a show of authority. In People v. De Bour, 40 N.Y.2d 210, 217 (1976), that court recognized the result of such an approach:
"Were we to carry the defendant's interpretations of . . . the Constitution to their logical extreme we would have to conclude that when the police possess a need or desire to initiate an encounter with a private individual they must be prepared to seize him or else do nothing. This approach is hardly reasonable."
[118] Approaching a stopped car, to make an inquiry of the passengers and to ask for identification revealed no forcible apprehension. "Here (the suspect) was merely approached and questioned …" *De Bour*, 40 N.Y.2d 210 at 217; "In a very thoughtful opinion, the Court of Appeals of New York, in *De Bour*, *supra*, took the view that an all or nothing approach (i.e., every police-initiated encounter with a citizen must be justified by a basis warranting outright seizure of the person) is dangerous to accepted Fourth Amendment standards."
[119] Gordon v. United States, 120 A.3d 73, 77 (2015).
[120] *Id.* at 79.

Investigative Detention: Under D.C. if investigative detentions are not consensual they need to be supported by a "reasonable articulable suspicion of criminal activity."[121]

D.C. adheres to the standard set forth in *Terry v. Ohio* requiring "the police to be able to point to specific and articulable facts, which taken together with rational inferences from those facts, reasonably warrant the intrusion."[122]

The scope of a permissible police action in a *Terry* stop is dependent upon whether the police's conduct is "reasonable under the circumstances."[123]

D.C. allows for an individual to be handcuffed during a *Terry* stop without being detained if the detention is a "reasonable precaution under the circumstances."[124]

In such cases where force is used during a *Terry* stop, the court applies an objective standard asking whether the officer's actions were objectively reasonable under the circumstances, and whether a reasonably prudent officer in same or similar circumstances would have acted in the same way.[125]

Seizure – Probable Cause

Arrest, otherwise known as seizure occurs when an officer "by means of physical force or show of authority has in some way restrained someone's liberty. D.C. follows the reasonableness standard set forth in *United States v. Mendenhall*. Arrests must be supported by probable cause prior to the police-citizen encounter.[126]

DELAWARE

Summary:

[121] *Id.* at 79.
[122] Anderson v. United States, 658 A.D.2d 1036 (1995) (citing *Terry v. Ohio*, 392 U.S. 1 (1968)).
[123] Womack v. United States, 673 A.2d 603, 607 (1996).
[124] *Id.*
[125] *Id.* at 609.
[126] Gordon v. United States, 120 A.D.3d 73, 79 (2015).

There are three levels of police citizen encounters in Delaware:[127]

1. Consensual encounters

2. Investigative detention

3. Arrest

There is no mention of *De Bour* in case law or opinion.

Consensual Encounters

Law enforcement officers may make contact with citizens on the street to ask them questions, and a consensual encounter between law enforcement officers and members of the public does not amount to a seizure.[128]

During a consensual encounter, a person has no obligation to answer the officer's inquiry and is free to go about his business, and only when the totality of the circumstances demonstrates that the police officer's actions would cause a reasonable person to believe he was not free to ignore the police presence does a consensual encounter become a "seizure" under the Fourth Amendment.[129]

Police officer's limited request for information is reasonable because it enables him to maintain a record of his contact with the individual encountered; officers are often required to make written reports of all encounters, and officer must also know who he has assisted in case someone files a legal claim against him, and innocent activity can turn out later to be criminal activity.[130]

One exception to the warrant requirement is the non-criminal, non-investigative "community caretaker" or "public safety" doctrine, and the doctrine stems from a recognition

[127] *See generally* Moore v. State, 997 A.2d 656 (2010); *see also* Stafford v. State, 59 A.3d 1223 (2012).
[128] Harris v. State, 12 A.3d 1154, 1154 (2011).
[129] Williams v. State, 962 A.2d 210, 216 (2008).
[130] *Id*. at 221.

that local police have multiple responsibilities, only one of which is the enforcement of criminal law.[131] Under the community caretaker exception to the warrant requirement, court must ascertain that the encounter was part of the police officer's community caretaker function, that the officer's actions during it remained within the caretaking function, and that, once the caretaking function had ceased, either the encounter was terminated, or some other justification existed for its continuance.[132]

Investigative Detention – Reasonable Suspicion

Law enforcement officers are permitted to initiate contact with citizens on the street for the purpose of asking questions, and this type of interaction is an encounter and, if consensual, neither amounts to a seizure nor implicates the Fourth Amendment.[133]

In order to satisfy the reasonable and articulable standard for stop, the officer must point to specific facts, which viewed in their entirety and accompanied by rational inferences, support the suspicion that the person sought to be detained was in the process of violating the law.[134]

Probable Cause to Arrest

Police officers may arrest individuals if the officer has probable cause to believe that the individual has committed a crime.[135]

FLORIDA

Summary:

Florida has no delineated tiers of police citizen encounters:

1. Consensual encounters

2. Investigatory stops

[131] *Id*. at 217.
[132] *Id*. at 219.
[133] *Id*. at 215.
[134] Harrison v. State, 144 A.3d 549, 550 (2016).
[135] Stafford v. State, 59 A.3d 1223, 1228 (2012).

3. Arrests

There is no mention of *De Bour* in case law or opinion.

Consensual Encounters

Least intrusive level of encounter between police and citizenry is commonly referred to as "consensual encounter," and no Fourth Amendment protection is implicated in such encounter; officer may question anyone on the street without founded suspicion, and unless the officer attempts to prevent the individual from exercising the right to walk away, any such questioning will usually constitute a consensual encounter rather than a stop.[136]

First level of police-citizen contact is a consensual encounter and involves only minimal police contact; during a consensual encounter a citizen may either voluntarily comply with a police officer's requests or choose to ignore them, citizen is free to leave during a consensual encounter, and constitutional safeguards are not invoked.[137]

In a consensual encounter, a police officer has the right to approach an individual in public and ask questions or request identification without having a founded suspicion of criminal activity; the individual may, but is not required, to cooperate with the police at this stage.[138]

Whether a reasonable person would feel free to disregard the police and go about his business, as center of inquiry for determining whether an encounter with the police should properly be deemed a seizure, depends upon the totality of circumstances.[139]

A consensual citizen encounter does not require the police to have a reasonable suspicion of any improper conduct before initiating conversation.[140]

Even an initially consensual police-citizen encounter can escalate into a stop.[141]

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[136] Saturnino-Boudet v. State, 682 So. 2d 188, 191 (1996).
[137] Greider v. State, 977 So. 2d 789, 793 (2008).
[138] State v. Gonzalez, 919 So. 2d 702, 704 (2006).
[139] State v. R.H., 900 So. 2d 689, 692 (2005).
[140] *Id*. at 691.

Investigatory Stop –Reasonable Suspicion

For a police officer to lawfully detain a citizen, an investigatory stop requires a well-founded, articulable suspicion of criminal activity, rather than mere suspicion.[142]

Absent reasonable suspicion of the commission of a crime, a person has an affirmative right to avoid police contact.[143]

Without a founded suspicion of criminal activity, a police officer does not have the right to detain a person absent that person's consent.[144]

A "founded suspicion," which would allow police officer to temporarily detain someone or make further investigation of an incident, is that which has some factual foundation in circumstances observed by officer, when those circumstances are interpreted in light of officer's knowledge.[145]

"Founded suspicion" of criminal activity, such as will justify stopping suspect, does not have to rise to level of probability of guilt required for finding of probable cause, but it must be more than random selection, sheer guesswork or hunch.[146]

Probable Cause to Arrest

An arrest, because of its intrusive nature, must be predicated on probable cause.[147]

Probable cause for an arrest warrant may be based on the personal knowledge of the complainant or affiant but can also be based on information received from others, e.g., fellow police officers or confidential informants.[148]

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[141] *Id*. at 692.
[142] *Greider*, 977 So. 2d at 792.
[143] D.G. v. State, 831 So. 2d 256, 256 (2002).
[144] *D.G.*, 831 So. 2d at 256.
[145] State v. Spurling, 385 So. 2d 672, 674 (1980).
[146] State v. W. O. R., 382 So. 2d 763, 764 (1980).
[147] Millets v. State, 660 So. 2d 789, 791 (1995).
[148] Kephart v. Hadi, 932 So. 2d 1086, 1091 (2006).

Question of probable cause to arrest is viewed from the perspective of a police officer with specialized training and takes into account the factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians, act.[149]

GEORGIA

Summary:

Georgia has no delineated tiers of police citizen encounters:

1. Non-coercive conversation

2. Brief stops or seizures

3. Arrests

One case citation to *De Bour* in *Edwards v. State*, 301 S.E.2d 693, 694 (1983).[150]

Non-Coercive Conversation

At least three types of police-citizen encounters exist: verbal communications involving no coercion or detention; brief stops or seizures that require reasonable suspicion; and arrests, which can only be supported by probable cause.[151]

In an encounter between police officers and citizens involving no coercion or detention, police officers may approach citizens, ask for identification, and freely question the citizen without any basis or belief that the citizen is involved in criminal activity, as long as the officers do not detain the citizen or create the impression that the citizen may not leave.[152]

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[149] Chavez v. State, 832 So. 2d 730, 747 (2002).

[150] "The arresting officer testified that the bulge under appellant's shirt at the waist appeared to be an automatic pistol.… We conclude, therefore, that the officer had a 'founded suspicion' justifying his stop of appellant." United States v. Gidley, 527 F.2d 1345(2) (5th Cir.), *cert. denied*, 429 U.S. 841, 97 S.Ct. 116, 50 L.Ed.2d 110 (1976); *see* United States v. Mireles, 583 F.2d 1115 (10th Cir.), *cert. denied*, 439 U.S. 936, 99 S.Ct. 332, 58 L.Ed.2d 332 (1978); United States v. Williamson, 567 F.2d 610 (4th Cir.1977); *see also* People v. De Bour, 40 N.Y.2d 210, 220 (1976).

[151] State v. Martin, 787 S.E.2d 314, 316 (2016); Pierce v. State, 738 S.E.2d 307, 309-10 (2013) (citing Akins v. State, 596 S.E.2d 719 (2004)).

[152] State v. Quaterman, 777 S.E.2d 485, 488–89 (2015) (citing McClary v. State, 663 S.E.2d 809 (2008)).

A consensual encounter requires the voluntary cooperation of a private citizen with non-coercive questioning by a law enforcement official. Because the individual is free to leave at any time during such an encounter, they are not 'seized' within the meaning of the Fourth Amendment.[153]

A citizen's ability to walk away from or otherwise avoid a police officer is the touchstone of a first-tier encounter and walking or even running from police is wholly permissible.[154]

A police officer may approach a stopped vehicle and ask driver to step out of the car and answer questions, so long as the officer does not detain or create the impression that they may not leave.[155]

Brief Stops or Seizures - Reasonable Suspicion

An officer may stop and detain a person briefly when the officer has a particularized and objective basis for suspecting the person is involved in criminal activity.[156]

In determining whether the detention/stop was justified by reasonable suspicion, the whole picture, the totality of the circumstances must be taken into account.[157]

Although an investigative stop cannot be based on an officer's mere hunch that criminal activity is afoot, officers may draw on their own experience and specialized training to make inferences from and deductions about the cumulative information available to them that might well elude an untrained person.[158]

[153] State v. Anderson, 772 S.E.2d 61, 63 (2015) (quoting State v. Felton, 676 S.E.2d 434, 436 (2009)).
[154] *Quarterman*, 777 S.E.2d at 489 (quoting Ewumi v. State, 727 S.E.2d 257 (2012)).
[155] *Pierce*, 738 S.E.2d at 309 (quoting *Akins*, 596 S.E.2d at 721)
[156] State v. Hammond, 723 S.E.2d 89, 92 (2012).
[157] Walker v. State, 747 S.E.2d 51, 55 (2013) (quoting Brown v. State, 686 S.E.2d 793, 796 (2009)).
[158] Sims v. State, 782 S.E.2d 687, 690 (2016) (quoting United States v. Arvizu, 534 U.S. 266, 273 (2002)).

Although headlong flight away from police officers is ambiguous and not necessarily indicative of wrongdoing, and susceptible of an innocent explanation, officers are authorized to detain individual to resolve this ambiguity.[159]

Probable Cause to Arrest

For any arrest, police officers are required to support it with a showing of probable cause.[160]

HAWAII

Summary:

Hawaii has no three levels of police citizen encounters:[161]

1. Random or consensual encounters

2. Investigative stops

3. Arrests

There is no mention of *De Bour* in case law or opinion.

Random or Consensual Encounters

[L]aw enforcement officers do not violate the Fourth Amendment by merely approaching an individual on the street or in another public place, by asking him if he is willing to answer some questions, by putting questions to him if the person is willing to listen, or by offering in evidence in a criminal prosecution his voluntary answers to such questions.[162]

There is no constitutional objection for a policeman merely to inquire of a person on the streets in a proper manner when the individual to whom the questions are addressed is under no compulsion to cooperate. Mere field interrogation, without more, by a police officer does not

[159] State v. Williams, 783 S.E.2d 700, 704 (2016).
[160] Carter v. State, 737 S.E.2d 724, 726 (2013).
[161] See State v. Kearns, 867 P.2d 903 (1994); see also State v. Barnes, 568 P.2d 1207 (1977); see also State v. Navas, 913 P.2d 39 (1996).
[162] State v. Quino, 840 P.2d 358, 364(1992) (citing Florida v. Royer, 460 U.S. 491, 497 (1983)).

involve "detention" in the constitutional sense so long as the officer does not deny the individual the right to move.[163]

Only when the officer, by means of physical force or show of authority, has in some way restrained the liberty of a citizen may a court conclude that a "seizure" has occurred. A court must evaluate the totality of the circumstances in determining whether a defendant was seized. A defendant is seized only if, in view of all the circumstances surrounding the incident, a reasonable person would have believed that he or she was not free to leave.[164]

Police officer cannot randomly encounter individuals without any objective basis for suspecting them of misconduct and then place them in coercive environment in order to develop reasonable suspicion to justify their detention.[165]

An investigative encounter can only be deemed "consensual" if:

(1) prior to the start of questioning, the person encountered was informed that he or she had the right to decline to participate in the encounter and could leave at any time, and

(2) the person thereafter voluntarily participated in the encounter.[166]

It is appropriate to require police officers who wish to question individuals without even a reasonable suspicion of criminal activity to ensure that the individuals are aware of their rights, because "no system of criminal justice can, or should, survive if it comes to depend for its continued effectiveness on the citizens' abdication through unawareness of their constitutional rights."[167]

Investigative Stop – Reasonable Suspicion

[163] State v. Tsukiyama, 525 P.2d 1099, 1103 (1974).
[164] *Id.* (quoting Terry v. Ohio, 392 U.S. 1, 19 fn. 16 (1968)).
[165] *Quino*, 840 P.2d at 365.
[166] State v. Kearns, 867 P.2d 903, 909 (1994).
[167] *Id.* at 909 (quoting Escobedo v. Illinois, 378 U.S. 478, 490 (1964)).

The police may temporarily seize or detain an individual to investigate possible criminal behavior based on reasonable suspicion, even if there is no probable cause for an arrest. To justify an investigative detention under the reasonable suspicion standard, the police officer must be able to point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant the intrusion.[168]

The specific and articulable facts should be measured by an objective standard where a person of reasonable caution would be warranted in believing that criminal activity was afoot and that the action taken was appropriate; In analyzing whether reasonable suspicion supported an investigatory stop, court considers the totality of the circumstances.[169]

In order for a police officer to conduct a valid stop and frisk, they must have observed specific conduct on the part of the person whom they are about to frisk, or have reliable information, from which they may reasonably infer that criminal activity is afoot and that the perpetrator is armed and presently dangerous.[170]

The State of Hawaii adopted the two-part inquiry first articulated in *Terry v. Ohio* in *State v. Perez*.[171] Whether a seizure pursuant to an investigative stop is reasonable, depends on:

1) whether the action was justified at its inception;[172] and
2) whether the search as actually conducted was reasonably related in scope to the circumstances which justified the interference in the first place.[173]

Subject matter and intensity of an investigative detention must be limited to that which is justified by the initial stop.[174]

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[168] State v. Barnes, 568 P.2d 1207, 1211 (1977).
[169] State v. Spillner, 173 P.3d 498, 504 (2007) (quoting *Barnes*, 568 P.2d at 1211).
[170] State v. Joao, 525 P.2d 580, 603 (1974).
[171] State v. Perez, 141 P.3d 1039, 1040 (2006).
[172] *See Barnes*, 568 P.2d at 1211.
[173] State v. Alvarez, 378 P.3d 889, 898 (2016).
[174] *Id*. at 898.

Probable Cause to Arrest

Under the safeguards of the Fourth Amendment to the United States Constitution and Article I, section 7 of the Hawaii Constitution, all arrests and searches must be based upon probable cause.[175]

Probable cause exists when the facts and circumstances within one's knowledge and of which one has reasonably trustworthy information are sufficient in themselves to warrant a person of reasonable caution to believe that an offense has been committed.[176]

IDAHO

Summary:

Idaho has three levels of police-citizen encounters:

1. Casual or consensual encounters

2. Investigatory stops

3. Arrests or seizures.

There is no mention of *De Bour* in case law or opinion.

Casual or Consensual Encounters

An encounter does not rise to the level of a seizure "simply because a police officer approaches an individual on the street or other public place and asks a few questions."[177]

Officers are not required to have a basis of suspicion to ask general questions and ask for identification.[178]

An encounter is deemed to be consensual "so long as police do not convey a message that compliance with their requests is required."[179]

[175] State v. Navas, 913 P.2d 39, 42 (1996).
[176] *Id.* at 42.
[177] State v. Fry, 831 P.2d 942, 944 (1991) (citing Florida v. Bostick, 501 U.S. 429 (1991)).
[178] *Id*.

Investigative Stop - Reasonable Suspicion

An investigative detention occurs when an officer has "specific articulable facts which justify suspicion that the detained person is, has been, or is about to be engaged in criminal activity."[180] The Idaho Supreme Court stated in *State v. Rawlings*:

> A police officer may, in appropriate circumstances and in an appropriate manner, detain a person for purposes of investigating possible criminal behavior even though there is no probable cause to make an arrest. *Terry*, 392 U.S. at 22, 88 S.Ct. at 1880 [20 L.Ed. 2d at 906]. Such a seizure is justified under the Fourth Amendment if there is an articulable suspicion that the person has committed or is about to commit a crime…. Whether an officer had the requisite reasonable suspicion to conduct an investigatory stop is determined under the totality of the circumstances.[181]

Courts look at the facts known to the police officer known at the time of the stop to determine if the officer inferred risks of danger reasonably under the totality of the circumstances.[182]

A "stop and frisk" is valid if after reasonable suspicion is established, there is an objective "assessment of the circumstances that confronted the officer at the time of the frisk as to whether the individual may be armed, and dangerous."[183]

Probable Cause to Arrest

A seizure occurs "when an officer, by means of physical force or show of authority, has in some way restrained a citizen's liberty."[184] Idaho follows the reasoning set out in *United States v. Mendenhall* that states a seizure may occur:

> where the person did not attempt to leave, would be threatening presence of several officers, the display of a weapon by an officer, some physical touching of the person of the citizen, or the use

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[179] State v. Howell, 358 P.3d 807, 808 (2015).
[180] State v. Sheldon, 88 P.3d 1220, 1223 (2003).
[181] State v. Rawlings, 829 P.2d 520, 522 (1992).
[182] State v. Holler, 32 P.3d 679, 683 (2001).
[183] *Id.*
[184] State v. Fry, 831 P.2d 942, 944 (1991).

> of language or tone of voice indicating that compliance with the officer's request might be compelled.[185]

When determining if a seizure has occurred the courts must "determine whether the circumstances of an encounter" are "so intimidating as to demonstrate that a reasonable person would have believed he [or she] was not free to leave if he [or she] had not responded."[186]

ILLINOIS

Summary:

Illinois has three levels of police citizen encounters[187]:

1. Consensual encounters/Community caretaking

2. Investigatory stops

3. Arrests

There is one case that cites to *De Bour*, *People v. McGowan*, 359 N.E.2d 220, 223(1977).[188]

Consensual Encounters/Community Caretaking

Police officers frequently investigate vehicle accidents in which there is no claim of criminal liability, and engage in what for want of a better term, may be described as community caretaking functions, totally divorced from the detection, investigation, or acquisition of evidence relating to the violation of a criminal statute.[189]

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[185] State v. Cardenas, 155 P.3d 704, 708 (2006) (citing United States v. Mendenhall, 446 U.S. 544, 554 (1980)).
[186] *Id*.
[187] *See* People v. Jones, 545 N.E2d 1332 (1989); *see also* United States v. Coccia, 446 F.3d 233, 238 (1st Cir. 2006); *see also* People v. Luedemann, 857 N.E.2d 187 (2006); *see also* People v. Dent, 797 N.E.2d 200 (2003).
[188] "The encounter did not subject McGowan to a loss of dignity, for where the police degrade and humiliate their behavior is to be condemned. Moreover, the attendant circumstances were sufficient to arouse the officers' interest. Therefore, even if there had been no articulable facts here to justify a forcible seizure of defendant, the police would have been authorized to make the brief limited inquiry that they did." *See* People v. De Bour (1976), 40 N.Y.2d 210, 222–23 (1976).
[189] Cady v. Dombrowski, 413 U.S. 433, 441 (1973).

Murray expanded the definition of a community caretaking function in such a way that it swallowed the entire consensual tier. This stood until corrected by the *Luedemann* court.[190]

"Community caretaking," rather than describing a tier of police-citizen encounter, refers to a capacity in which the police act when they are performing some task unrelated to the investigation of crime. Accordingly, other circuits use community caretaking as a warrant requirement exception, when police actions other than criminal investigation lead to a search.[191]

Such functions include: responding to heart attack victims, helping children find their parents, responding to calls about missing persons or sick neighbors, mediating noise disputes, taking into possession lost and found property, dealing with strays, lost and injured animals and helping inebriates home. Courts generally uphold searches or seizures in these situations as reasonable, because the police were acting in a public safety or community caretaking capacity that has nothing to do with consensual encounters with the public. Clearly, police can approach an individual, even if they are not acting in a community caretaking function.[192]

Consensual questioning does not implicate the 4th amendment.[193]

A police officer who approaches an individual and questions them or asks for identification, does not violate the 4th amendment when the person remains free to disregard questions and walk away. Thus, a seizure is the delineation between the first and latter tiers.[194]

Under 4th amendment principles, in situations in which a person's freedom of movement is not restricted by a factor independent of police conduct, encounter between the person and the

[190] *Luedemann*, 857 N.E.2d at 196–97.
[191] *See* United States v. Coccia, 446 F.3d 233, 238 (1st Cir. 2006); United States v. Johnson, 410 F.3d 137, 143–44 (4th Cir. 2005).
[192]. *Luedemann*, 857 N.E.2d at 197–200 .
[193] People v. Jones, 545 N.E2d 1332, 1335 (1989) (citing Florida v. Royer, 460 U.S. 491, 497 (1983)).
[194] People v. Dent, 797 N.E.2d 200, 209 (2003).

police officer is considered consensual if a reasonable person would feel free to disregard the police and go about their business.[195]

Investigative Stops – Reasonable Suspicion

Since the 4th amendment is triggered whenever there is a search or seizure, and the first tier is not meant as an infringement upon 4th amendment protections, the threshold limit to the first tier is whether coercion or detention has occurred, implicating a seizure.[196]

A seizure occurs when a reasonable person would not feel free to leave under the circumstances.[197]

Illinois State courts generally apply the *Mendenhall* factors to determine if a reasonable person would feel seized. As cited, they are:

(1) the threatening presence of several officers;

(2) the display of a weapon by an officer;

(3) some physical touching of the person of the citizen;

(4) the use of tone or language or tone of voice indicating that compliance with the officer's request might be compelled.[198]

Further, the court says that an analysis of the totality of the circumstances should include these factors, but that they are not exhaustive; in their absence, otherwise inoffensive contact between a member of the public and the police, cannot as a matter of law, amount to a seizure of that person.[199]

Probable Cause to Arrest

[195] Warfield v. City of Chicago, 565 F.Supp.2d 948, 956 (2008) (citing United States v. Scheets, 188 F.3d 829, 836 (7th Cir. 1999)).
[196] People v. Luedemann, 857 N.E.2d 187, 197 (2006).
[197] *Id.* at 202 (2006) (citing United States v. Mendenhall, 446 U.S. 544, 554 (1980)).
[198] *Luedemann*, 857 N.E.2d at 201.
[199] *Id.*

Probable cause to arrest exists when the facts known to the officer at the time of the arrest are sufficient to lead a reasonably cautious person to believe that the arrestee has committed a crime. That is, the existence of probable cause depends upon the totality of the circumstances at the time of the arrest. In dealing with probable cause we deal with probabilities. These are not technical; they are the factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians, act.[200]

INDIANA

Summary:

Indiana has three articulated levels of police-citizen encounters.

1. Consensual Encounters[201]
2. Investigative Stops
3. Arrests and Seizures[202]

There is no mention of *De Bour* in case law or opinion.

Consensual Encounters

Consensual encounters do not require any basis of suspicion.[203]

To determine if an encounter is consensual or nonconsensual the court must look at all of the circumstances of the stop and consider whether a reasonable person would have felt free to leave.[204]

The court follows the objective test set out in *United States v. Mendenhall* that establishes "not whether the citizen perceived that he was being ordered to restrict his movement, but whether the officer's words and actions would have conveyed that to a reasonable person."[205]

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[200] People v. Wear, 893 N.E.2d 631, 642 (citing People v. Love, 769 N.E.2d 10 (2002)).
[201] Rutledge v. State, 28 N.E. 3d 281, 287 (2015).
[202] *Id*.
[203] *Id*.
[204] Finger v. State, 799 N.E.2d 528, 532 (2003).

If an individual's freedom to walk away is restrained in anyway then reasonable suspicion or probable cause is required.[206]

Investigative Stops

An investigative stop under *Terry v. Ohio* allows an officer to briefly stop an individual to conduct an investigative stop if the officer has reasonable suspicion supported by specific or articulable facts that the individual is committing or about to commit a crime.[207]

To determine if a *Terry* stop becomes an arrest or a seizure is determined under the totality of the circumstances.[208]

The officer's reasonable suspicion must be held to an objective standard of whether an officer of reasonable caution would believe the officer's acts were reasonable knowing all of the facts and circumstances known at the time.[209]

A *Terry* stop must be a "relatively brief encounter."[210]

Arrests and Seizures

An arrest occurs when a person is taken "into custody, that he may be held to answer for a crime."[211]

In other words, "an arrest occurs when a police officer interrupts the freedom of the accused and restricts his liberty of movement."[212]

IOWA

Summary:

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[205] *Rutledge*, 28 N.E.3d at 289 (quoting California v. Hodari D., 499 U.S. 621, 628 (1991) (citing United States v. Mendenhall,446 U.S. 544, 554 (1980)).
[206] See Gaddie v. State, 10 N.E.3d 1249, 1250 (2014).
[207] Armfield v. State, 918 N.E.2d 316, 319 (2009).
[208] See Campos v. State, 885 N.E.2d 590, 597 (2008).
[209] Kelly v. State, 997 N.E.2d 1045, 1051 (2013).
[210] Wilson v. State, 745 N.E.2d 789, 791 (2001).
[211] IND. CODE §35-33-1-5 (2008).
[212] Sears v. State, 668 N.E.2d 662, 667 (1996).

Iowa has no delineated tiers of police citizen encounters.

There is no mention of *De Bour* in case law or opinion.

Fourth Amendment Not Triggered – No Suspicion

For the fourth amendment to be triggered, the question is whether police action rises to the level of a seizure. "A seizure occurs when an officer by means of physical force or show of authority in some way restrains the liberty of a citizen."[213]

Police questioning by itself, is not a seizure.[214]

If an individual submits or cooperates with police officers, this does not automatically equate to voluntary consent.[215]

"When a suspect's liberty is restrained by show of authority, he does not somehow lose his constitutional rights by complying with the request of the police."[216]

If police approach an individual, put questions to them in public and do not use coercive means to do so, then the interaction is considered consensual, even if the person has not been advised that they are free to refuse to respond.[217]

"Unless the circumstances of the encounter are so intimidating as to demonstrate that a reasonable person would have believed he was not free to leave if he had not responded, one cannot say that the questioning resulted in a detention under the Fourth Amendment."[218]

Police officers are not precluded from approaching a person on the street and asking the person if he or she is willing to answer questions, but without articulable suspicion may take no action to detain the person. An individual may ignore the police and go about their business (in

[213] State v. Pickett, 573 N.W.2d 245, 247 (1997).
[214] Hiibel v. Sixth Judicial Dist., 542 U.S. 177, 185 (2004) (citing INS v. Delgado, 466 U.S. 210, 216 (1984)).
[215] See State v. Lathum, 380 N.W.2d 743 (1985).
[216] *Id*. at 745.
[217] United States, v. Drayton, 536 U.S. 194, 203 (2002).
[218] *Delgado*, 446 U.S. at 216.

consensual encounters), but this does not extend to behavior that changes because of an awareness of the presence of the police officers; this is not counted as going about your business, and can result in reasonable suspicion.[219] An analysis of the totality of the circumstances can take this as a factor to justify a finding of reasonable suspicion.

Investigative Detention –Reasonable Suspicion

Under *Terry v. Ohio*, police officers lacking probable cause, may nonetheless briefly "stop and frisk" a suspect of criminal activity, or briefly stop an automobile, if the officer possesses reasonable particularized suspicion of criminal activity.[220]

Here, where a state creates a legal duty for their residents to comply with police requests for identification when the circumstances have created a reasonable suspicion that the suspect has committed or is about to commit a criminal offense, then the suspect does not have the right to refuse to cooperate on the grounds of Fourth Amendment protection.[221]

Probable Cause to Arrest

Probable cause to arrest exists when facts and circumstances within arresting officer's knowledge would warrant person of reasonable caution to believe that an offense is being committed.[222]

KANSAS

Summary:

There are four types of police-citizen encounters in Kansas:[223]

1. Voluntary encounters,
2. Investigatory detentions,

[219] See State v. Corbett, 758 N.W.2d 237 (2008).
[220] See Terry v. Ohio, 392 U.S. 1 (1968).
[221] Hiibel v. Sixth Judicial Dist., 542 U.S. 177, 188 (2004).
[222] See State v. Harris, 490 N.W.2d 561
[223] State v. Young, 157 P.3d 644, 647 (2007).

3. Public safety stops, and

4. Arrests

There is no mention of *De Bour* in case law or opinion.

Voluntary Encounters

Police officer, in making investigation, may ask questions of people who are upon public streets.[224]

Under appropriate circumstances, a police officer may approach and stop a person in an appropriate manner for the purpose of investigating a crime even though the officer has no reason to believe that the person stopped has committed the crime which is being investigated.[225]

To distinguish consensual police-citizen encounters from investigatory detentions, a court must determine whether a reasonable person would feel free to go about his or her business and disregard the law enforcement officer.[226]

Depending on the facts of the case, an individual may consent to a police request for a pat-down search for weapons without transforming a voluntary encounter into an investigatory detention.[227]

A voluntary encounter between a police officer and a citizen is not considered a "seizure" and does not require the officer to have reasonable suspicion of criminal activity.[228]

In a voluntary encounter between a citizen and a police officer, the citizen is always free to leave or terminate the encounter.[229]

[224] State v. Epperson, 703 P.2d 761 (1985).
[225] State v. Shaffer, 574 P.2d 205, 208 (1977).
[226] State v. Lee, 156 P.3d 1284, 1288 (2007).
[227] *Id*. at 1289.
[228] *Young*, 157 P.3d at 648.
[229] *Id*.

An encounter between a citizen and a police officer in a public place is considered voluntary as long as a reasonable person would feel free to decline the officer's requests for information or otherwise terminate the encounter, and this determination must be made by examining the totality of the circumstances.[230]

A police officer is not required to inform a citizen that he or she is free to go before an encounter can be considered voluntary, but this is one factor to be considered under the totality of the circumstances.[231]

The mere fact that an officer is in uniform and carrying a weapon does not render an otherwise voluntary encounter coercive.[232]

Investigative Detention – Reasonable Suspicion

In determining whether a police officer had reasonable suspicion of criminal activity to justify an investigatory detention, the officer must be able to point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion; consequently, a court sitting to determine the existence of reasonable suspicion must require the officer to articulate the factors leading to that conclusion.[233]

In conducting a *Terry* frisk, the police officer must have prior knowledge of facts or observe conduct of the person or receive responses to the limited interrogation authorized by statute governing stops of suspects which, in the light of his experience, would cause the officer to reasonably suspect that his personal safety requires such search.[234]

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[230] *Id*. at 650.
[231] *Id*.
[232] *Id*. at 654.
[233] State v. Jones, 333 P.3d 886, 896 (2014).
[234] State v. Burton, 159 P.3d 209, 213 (2007).

Because the stop of a vehicle on a public roadway always constitutes a "seizure," a police officer must have specific articulable facts and reasonable inferences that criminal activity has occurred, is occurring, or is about to occur to justify the stop.[235]

In order to justify "stop and frisk" search, police officer must reasonably believe that his or her personal safety is at risk, and preservation of evidence is not permissible purpose for stop.[236]

Sole justification for *Terry* search is protection of police officer and it must, therefore, be confined in scope to intrusion reasonably designed to discover possible existence of concealed objects which might be used for assault against police officer; preservation of evidence is not permissible purpose.[237]

Reasonable suspicion, as required to justify an investigatory detention, is a less demanding standard than probable cause in terms of the quantity and quality of the evidence available to the police.[238]

In determining whether a police officer had reasonable suspicion of criminal activity justifying investigatory detention, the court gives deference to a trained law enforcement officer's ability to distinguish between innocent and suspicious circumstances, remembering that reasonable suspicion represents a minimum level of objective justification which is considerably less than proof of wrongdoing by a preponderance of the evidence.[239]

An appellate court makes its determination of whether an officer was justified in conducting an investigative detention with deference to a trained law enforcement officer's

[235] State v. Ross, 149 P.3d 876, 879 (2007).
[236] State v. Schmitter, 933 P.2d 762, 764 (1997).
[237] State v. Waddell, 784 P.2d 381, 384 (1989).
[238] State v. Cook, 161 P.3d 779, 783 (2007).
[239] State v. Moore, 124 P.3d 1054, 1062 (2005).

ability to distinguish between innocent and suspicious circumstances, remembering that reasonable suspicion represents a minimum level of objective justification.[240]

Public Safety Stop

In Kansas, police can stop vehicles for safety reasons. Police can investigate after making a public safety stop of an automobile. These detentions are sometimes called community caretaking stops.[241]

Legality of a public-safety stop can be evaluated in three steps, which are (1) as long as there are objective, specific, and articulable facts from which an experienced officer would suspect that a citizen is in need of help or is in peril, then that officer has the right to stop and investigate, (2) if the citizen is in need of aid, then the officer may take appropriate action to render assistance or mitigate the peril, and (3) once the officer is assured that the citizen is not in peril or is no longer in need of assistance or that the peril has been mitigated, then any actions beyond that constitute a seizure implicating the protections provided by the Fourth Amendment.[242]

Police officers can perform public-safety stops only if the stops are based upon specific and articulable facts.[243]

A public-safety stop is not for investigative purposes.[244]

Probable Cause to Arrest

Warrantless arrest is permissible if there is probable cause to believe that person has committed crime.[245]

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[240] *Cook*, 161 P.3d at 783.
[241] *See generally* State v. Gonzalez, 141 P.3d 501 (2006).
[242] *See id*.
[243] *See id*.
[244] *See id*.
[245] Thompson v. City of Lawrence, 58 F.3d 1511, 1515 (10th Cir. 1995).

When a peace officer has probable cause to believe that a person is committing a particular public offense, he is justified in arresting that person, and it is immaterial that the officer may have thought, without probable cause, that the defendant was committing or had committed other offenses as well.[246]

"Probable cause" for an arrest is the reasonable belief that a specific crime has been or is being committed and that the defendant committed the crime.[247]

"Probable cause" to arrest exists when the facts and circumstances within the arresting officer's knowledge are sufficient to assure a person of reasonable caution that an offense has been or is being committed and the person being arrested is or was involved in a crime.[248]

KENTUCKY

Summary:

Kentucky has three levels of police citizen encounters[249]:

1. Consensual encounters

2. Temporary detentions, generally referred to as *Terry* stops and

3. Arrests.

There is no mention of *De Bour* in case law or opinion.

Consensual Encounters

A police officer may approach a person, identify himself as a police officer, and ask a few questions without implicating the Fourth Amendment.[250]

A consensual encounter maybe transformed into a seizure implicating the Fourth Amendment when the detainee no longer reasonably feels at liberty to leave.[251]

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[246] Marrs v. Boles, 51 F. Supp. 2d 1127, 1135 (D. Ka. 1998).
[247] State v. Hill, 130 P.3d 1, 9 (2006).
[248] *Id*.
[249] *See generally* Baltimore v. Com., 119 S.W.3d 532 (2003).
[250] *Baltimore*, 119 S.W.3d at 537.

Temporary Detentions – Reasonable Suspicion

Police may make a *Terry* stop if they have reasonable suspicion that criminal activity is afoot.[252]

Where a seizure has occurred, if police have a reasonable suspicion grounded in specific and articulable facts, that a person they encounter was involved in or is wanted in connection with a completed felony, then they may make a Terry stop to investigate that suspicion.[253]

The purpose of the limited *Terry* search is not to discover evidence of a crime, but rather to allow the officer to pursue the investigation without fear of violence or physical harm.[254]

Probable Cause to Arrest

Probable cause for arrest involves reasonable grounds for the belief that the suspect has committed, is committing, or is about to commit an offense.[255]

LOUISIANA

Summary:

Louisiana has three levels of police-citizen encounters: arrest, brief investigatory stops, and "brief encounters."

There is no mention of *De Bour* in case law or opinion.

Brief Encounters

Stops that do not require any level of suspicion and are not protected by the Fourth Amendment are "brief encounters."[256]

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[251] *Id*.
[252] *Id*.
[253] *Id*.
[254] *Id*. at 538.
[255] *Id*. at 539.
[256] State v. Martin, 29 So. 3d 951, 955 (2011).

This type of encounter includes: consensual encounters,[257] approaching an individual to ask simple questions,[258] requesting identifications,[259] etc.

Louisiana does not have any constitutional protections where there is minimal police contact.[260]

Brief Investigatory Stops – Reasonable Suspicion

Investigatory stops need to be supported by reasonable suspicion.[261]

Louisiana follows *Terry v. Ohio*'s definition of reasonable suspicion being "specific and articulable facts, which taken together with rational inferences from those facts, reasonably warrant[ed] the stop of the defendant."[262]

When a court is determining if an officer had reasonable suspicion to conduct an investigatory stop the court must consider the totality of the circumstances of the stop.[263]

An investigatory stop can include restricting an individual's movement, but it cannot be for a prolonged period of time.[264]

An officer may frisk an individual during an investigatory stop when he "reasonably suspects he is in danger," he may search for dangerous weapons.[265]

Probable Cause to Arrest

Seizures must be supported by probable cause. [266]

MAINE

Summary:

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[257] *See id*.
[258] State v. Herrera, 23 So. 3d 896, 897 (2009).
[259] State v. Sherman, 931 So. 2d 286, 291 (2006).
[260] *See Martin*, 29 So. 3d at 955.
[261] State v. Crucia, 181 So. 3d 751, 756 (2015).
[262] *See* Terry v. Ohio, 391, U.S. 1 (1986).
[263] *Crucia*, 181 So. 3d at 756.
[264] State v. Sims, 851 So. 2d 1039, 1043 (2003).
[265] LA. CODE. CRIM. PROC. ANN. art. 215.1(B) (1997).
[266] State v. Martin, 29 So. 3d 951, 955 (2011).

Maine has no delineated tiers of police citizen interaction.

There is no reference to *De Bour* in case law or opinion.

Fourth Amendment Not Triggered – No Suspicion

An officer may approach a citizen and engage in a consensual conversation without effecting a detention for purposes of the Fourth Amendment, and thus need not have an "articulable suspicion" before engaging in that conversation; it does not follow, however, that the officer who does have an articulable suspicion must consistently engage in conduct rising to the level of a detention when he undertakes an investigatory conversation which ultimately culminates in a brief detention.[267]

No seizure occurs when person goes voluntarily with police in spirit of apparent cooperation with officer's investigation. [268]

Whether there has been a governmental intrusion upon a person's freedom sufficient to bring into play the legal consequences attaching to an "arrest" is not correctly determined by confining the focus of inquiry to the perspective of the person subjected to the intrusion; the perspective must be that of the outside observer who views the entirety of the situation and this encompasses all circumstances bearing on the objectively ascertainable intent of the intruding police officer as well as of the person subjected to intrusion. [269]

Even if defendant reasonably believed that he would be taken into custody if he did not accede to police officer's "request" that defendant come to police station to help clear up matter involving alleged stolen wallet, such belief on part of defendant could not be legally sufficient to establish an "arrest" of defendant before police officer in fact acted so as to assert control over defendant's person; likewise, subjective intention of police officer to assert custodial control,

[267] State v. Gulick, 759 A.2d 1085, 1089 (2000).
[268] State v. Bleyl, 435 A.2d 1349, 1356 (1981).
[269] State v. Kelly, 376 A.2d 840, 847 (1977).

absent some objective manifestation effectuating the intent, is not per se determinative of issue whether an "arrest" of defendant took place. [270]

Investigative Detention – Reasonable Suspicion

A police officer with reasonable suspicion of criminal activity may detain a suspect briefly for questioning aimed at confirming or dispelling his suspicions. [271]

An encounter between a police officer and a citizen implicates the Fourth Amendment only if the officer "seizes" the citizen. [272]

Probable Cause to Arrest

Probable cause to arrest exists when facts and circumstances of which arresting officer has reasonably trustworthy information would warrant ordinarily prudent and cautious police officer to believe subject did commit or was committing a crime. [273]

MARYLAND

Summary:

There are three Maryland cases that have cited to *De Bour* as examples of establishing reasonable suspicion for a *Terry* stop: *Watkins v. State*, 420 A.2d 270, 276 (1980)[274]; *Ransome v. State*, 816 A.2d 901, 906 (2003)[275]; *Farrow v. State*, 514 A.2d 35, 41 (1986).[276]

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[270] *Id*.
[271] United States v. Pardue, 270 F. Supp. 2d 61, 65 (D. Me. 2003).
[272] State v. Patterson, 868 A.2d 188, 191 (2005).
[273] State v. Boylan, 665 A.2d 1016, 1019 (1995).
[274] "There is a difference of significant degree between a report only that a person has a gun in his possession and another report that a person not only has a gun but that he has just used it for the commission of a crime.' Of course, where the report indicates that the person has used the weapon to menace or threaten or will use the weapon if stopped for questioning . . . then the personal and public safety may well mandate a more intensive police intrusion." (quoting People v. De Bour, 40 N.Y.2d 210, 225 (1976)).
[275] There have been, to be sure, many cases in which a bulge in a man's clothing, along with other circumstances, has justified a frisk, and those cases are entirely consistent with *Terry*. *See, e.g.*, (defendant, meeting drug courier profile, questioned at airport and admitted his luggage contained some marijuana and cocaine; officer noticed bulge in pants legs near top of boots; patted down for safety); People v. De Bour, 40 N.Y.2d 210, 225 (1976).
[276] "There is a difference of significant degree between a report only that a person has a gun in his possession and another report that a person not only has a gun but that he has just used it for the commission of a crime.' Of course, where the report indicates that the person has used the weapon to menace or threaten or will use the weapon if

Maryland has three levels of police citizen encounters:[277]

1. Consensual encounters

2. Investigative stop

3. Arrests

Consensual Encounter

Maryland specifically describes a consensual encounter as "simply the voluntary cooperation of a private citizen in response to non-coercive questioning by law enforcement officials."[278]

A consensual encounter has no restraint of an individual's liberty and "elicits an individual's voluntary cooperation with non-coercive police contact."[279]

Under this category, the interaction does not need to be supported by any type of suspicion and the fourth amendment is not implicated[280].

Maryland considers consensual encounters to be: approaching an individual in a public place, engaging in conversation, and requests for information.[281]

An encounter stops being consensual when the police use a show of authority, resulting in the individual feeling as though they are unable to leave.[282]

Investigative Stop

The investigative stop must be supported by reasonable suspicion that the individual has committed or is about to commit a crime, "permitting the officer to stop and briefly detain the individual."[283]

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stopped for questioning . . . then the personal and public safety may well mandate a more intensive police intrusion." (quoting People v. De Bour, 40 N.Y.2d 210, 225 (1976)).

[277] Swift v. State, 899 A.2d 867, 873 (2006).

[278] *Id.* at 874.

[279] *Id.*

[280] *Id.*

[281] *Id.*

[282] *Id.* (citing United States v. Mendenhall, 446 U.S. 544, 554 (1980)).

Maryland follows that a police officer can make an investigatory stop without violating an individual's right to be free from unreasonable seizures if the officer has "a reasonable, articulable suspicion of criminal activity."[284]

Maryland has limited the scope of a *Terry* stop in that its duration and purpose "can only last as long as it takes for a police officer to confirm or dispel his suspicions."[285]

Like in most jurisdictions, Maryland subscribes to the reasonableness tests developed in *U.S. v. Mendenhall* where under all of the facts and circumstances a reasonable person in same or similar circumstances would have felt free to leave.[286]

Arrest

The most intrusive encounter in Maryland, like most jurisdictions, is the arrest which requires probable cause to believe that a person has committed or is in the process of committing a crime.[287]

An arrest or detention is defined in Maryland as follows:

> It is generally recognized that an arrest is the taking, seizing, or detaining of the person of another (1) by touching or putting hands on him; (2) or by any act that indicates an intention to take him into custody and that subjects him to the actual control and will of the person making the arrest; or (3) by the consent of the person to be arrested… it is said that four elements must ordinarily coalesce to constitute a legal arrest: (1) an intent to arrest; (2) under a real or pretended authority; (3) accompanied by a seizure or detention of the person; and (4) which is understood by the person arrested.[288]

MASSACHUSETTS

Summary:

Massachusetts has no delineated tiers of police citizen interaction.

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[283] *Id.*
[284] *Id.*
[285] Ferris v. State, 735 A.2d 491, 500 (1997).
[286] *Mendenhall*, 446 U.S. at 554.
[287] *Id*.
[288] Longshore v. State, 924 A.2d 1129, 1138 (2007) (citing Bouldin v. State, 350 A.2d 130, 132–33 (1976)).

There are two cases that cite to *De Bour*: *Commonwealth v. Keane*, 368 N.E.2d 828, 828 (1977)[289]; and *Commonwealth v. McCauley*, 419 N.E.2d 1072, 1074 (1981).[290]

Fourth Amendment Not Triggered – No Suspicion

Police officers do not violate Fourth Amendment by merely approaching person on street or in another public place, by asking him if he is willing to answer some questions, by putting questions to him if person is willing to listen, or by offering in evidence in criminal prosecution his voluntary answers to such questions.[291]

Citizens have no legal duty to cooperate with police inquiries; if approached by police officers, a person need not answer any questions posed to him and, in fact, may decline to listen to the questions at all and go on his way.[292]

The person approached by police need not answer any question put to him; he may decline to listen to the questions at all and may go on his way.[293]

Defendant who was convicted of possession of more than one ounce of marijuana was not seized when police officers approached defendant on public street after observing what officers believed to be a drug transaction; officers wore no uniforms, identified themselves by displaying badges, did not display any weapons or engage in hostile or aggressive actions towards defendant, and otherwise did not impinge upon any constitutionally protected interest of defendant.[294]

Investigatory Stop – Reasonable Suspicion

[289] "This case is distinguishable from *People v. LaPene*, 40 N.Y.2d 210, 221–26 (1976), relied on by the defendant, in which the police, who entered a barroom on the basis of a radio call that a person described in the call was in the barroom and armed, saw someone who answered that person's description but, unlike our case, saw nothing to corroborate the information that he had a gun."
[290] "Compare and contrast *People v. De Bour*, 40 N.Y.2d 210, 221–26, 232 (1976), where in circumstances much like those in the present case, Judge Breitel joined in an opinion reaching a different result."
[291] Perry v. Bordley, 379 F. Supp. 2d 109, 112 (D. Mass. 2005).
[292] Commonwealth v. Damelio, 979 N.E.2d 792, 796 (2012).
[293] United States v. Smith, 79 F. Supp. 3d 353, 357 (D. Mass. 2015).
[294] Commonwealth v. Damelio, 979 N.E.2d 792, 795 (2012).

Police officer may conduct a brief investigatory stop when he or she has a reasonable, articulable suspicion that criminal activity is afoot.[295]

An investigatory stop is justified if the police have "reasonable suspicion" to conduct the stop.[296]

A justifiable threshold inquiry permits a limited restraint of the individuals involved in investigatory stop, as long as their detention is commensurate with the purpose of the stop; the degree of suspicion the police reasonably harbor must be proportional to the level of intrusiveness of police conduct.[297]

Police officers' pat-frisk and handcuffing of defendant for safety reasons during investigative stop did not convert investigative stop into a de facto arrest requiring probable cause; the encounter took place in public and lasted only minutes, and while there were several officers at the scene, they did not brandish their weapons, voice threats, or physically strike defendant.[298]

Defendant was "seized," for purposes of investigatory stop, when police officer called out for defendant to stop.[299]

Before making an arrest, police may approach and question a person for investigative purposes without implicating constitutional interests as long as the individual's ability to avoid the encounter remains viable.[300]

[295] United States v. McKoy, 428 F.3d 38, 39 (1st Cir. 2005).
[296] Commonwealth v. Phillips, 897 N.E.2d 31, 40 (2008).
[297] *Id.*
[298] United States v. Allah, 994 F. Supp. 2d 148, 155 (D. Mass. 2014).
[299] Commonwealth v. Dasilva, 775 N.E.2d 1269, 1274 (2002).
[300] Commonwealth v. Moscat, 731 N.E.2d 544, 546 (2002).

A police officer does not seize an individual on a street merely by approaching him and questioning him; only when the officer, by means of physical force or show of authority, has in some way restrained the liberty of a citizen may court conclude that a seizure has occurred.[301]

Police officer may, in appropriate circumstances and in appropriate manner, approach person for purposes of investigating possible criminal behavior, even though there is no probable cause to make arrest.[302]

A police officer's field encounter with a citizen is not a stop in the constitutional sense.[303]

Investigatory stop may not be so intrusive in duration or manner as to violate constitutional provisions unless done on probable cause.[304]

Probable Cause to Arrest

Probable cause to arrest exists where, at the moment of arrest, the facts and circumstances within the knowledge of the police are enough to warrant a prudent person in believing that the individual arrested has committed or was committing an offense.[305]

MICHIGAN

Summary:

Michigan has no delineated tiers of police-citizen encounters.

There is one mention to *De Bour* in *People v. Walker*, 343 N.W.2d 528, 532 n.2 (1983).[306]

Fourth Amendment Not Triggered – No Suspicion

[301] Commonwealth v. Damelio, 979 N.E.2d 792, 796 (2012).
[302] Perry v. Bordley, 379 F. Supp. 2d 109, 113 (D. Mass. 2005).
[303] Commonwealth v. DePeiza 848 N.E.2d 419, 423 (2006).
[304] *Moscat*, 731 N.E.2d at 546.
[305] Commonwealth v. Lites, 858 N.E.2d 302, 306 (2006).
[306] People v. Walker, 343 N.W.2d 528, 532 n.2 (1983) ("Not all encounters between police officers and citizens have to be justified under the *Terry* standard." People v. De Bour, 40 N.Y.2d 210, 386 N.Y.S.2d 375, 352 N.E.2d 562 (1976)).

Law enforcement officers do not violate the Fourth Amendment merely by approaching an individual on the street or in another public place.[307]

Citizen has no duty to stop and answer questions when approached by police officer in public place and may decline to listen to questions at all and go on his way.[308]

Investigatory Stops – Reasonable Suspicion

Probable cause to arrest is not necessary for an investigative stop; it is necessary that the police officer have a reasonable belief that criminal activity may be occurring.[309]

The conduct of a police officer in drawing his weapon or even handcuffing a defendant does not transform a stop into an arrest.[310]

There comes a time after a temporary detention when the police officer must either arrest the stopped individual or allow him to go free; an arrest can occur only when the facts satisfy the officer that he has probable cause to believe the individual has committed an offense; without probable cause, even though the investigation has proved inconclusive, the officer must then disengage the individual from official confrontation.[311]

Brief investigative stops short of arrest are permitted where police officers have reasonable suspicion of ongoing criminal activity.[312]

Criteria for constitutionally valid investigative stop are that police have particularized suspicion, based on objective observation, that person stopped has been, is, or is about to be engaged in criminal wrongdoing.[313]

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[307] People v. Taylor, 542 N.W.2d 322, 323 (1995).
[308] People v. Lambert, 436 N.W.2d 699, 701 (1989).
[309] People v. Marland, 355 N.W.2d 378, 381 (1984).
[310] People v. Dunbar, 690 N.W.2d 476, 481 (2004).
[311] People v. Williams, 234 N.W.2d 541, 545 (1975).
[312] People v. Peebles, 550 N.W.2d 589, 592 (1996).
[313] *Id*.

A police officer's commonsense assessment of probability that criminal activity afoot is not to be given overly technical review in determining whether investigative stop was permissible.[314]

Even though police do not have probable cause to arrest, under certain circumstances they may detain suspect if facts known to police officer would justify belief of person of reasonable caution that action taken was proper.[315]

Probable Cause to Arrest

Probable cause to make an arrest is found when the facts and circumstances within a police officer's knowledge are sufficient to warrant a reasonable person to believe that an offense had been or is being committed.[316]

MINNESOTA

Summary:

Minnesota has no delineated tiers of police citizen encounters.

There is no mention of *De Bour* in case law or opinion.

Fourth Amendment Not Triggered – No Suspicion

If reasonable person would feel free to disregard police and go about his business, encounter is consensual and Fourth Amendment scrutiny is not triggered.[317]

Seizure does not occur when police officer approaches individual and merely questions him or asks to examine his identification, so long as officer does not convey message that compliance with his request is required.[318]

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[314] People v. Christie, 520 N.W.2d 647, 649 (1994).
[315] People v. Walker, 343 N.W.2d 528, 530 (1983).
[316] People v. Dunbar, 690 N.W.2d 476, 484 (2004).
[317] United States v. Angell, 11 F.3d 806, 809 (8th Cir. 1993).
[318] United States v. Ward, 23 F.3d 1303, 1305 (8th Cir. 1994).

No "seizure" occurs when police officer merely questions individual or asks to examine individual's identification, so long as officer does not convey message that compliance with his request is required.[319]

To determine whether particular encounter constitutes seizure, court considers all circumstances surrounding encounter to determine whether police conduct would have communicated to reasonable person that he was not free to decline officers' request or otherwise terminate encounter.[320]

Under the search and seizure provision of state constitution, a person has been seized if in view of all the circumstances surrounding the incident, a reasonable person would have believed that he or she was neither free to disregard the police questions nor free to terminate the encounter.[321]

Not every interaction between the police and a citizen amounts to a seizure; rather, a seizure occurs when the officer, by means of physical force or show of authority, has in some way restrained the liberty of a citizen.[322]

The relevant inquiry in determining whether a seizure has occurred is whether based on the totality of the circumstances a reasonable person would believe that he or she is neither free to disregard the police nor free to terminate the encounter.[323]

Investigatory Stops –Reasonable Suspicion

Police officer may stop and temporarily seize person to investigate that person for criminal wrongdoing, if officer reasonably suspects that person of criminal activity, based on specific, articulable facts which provide particularized and objective basis for the suspicion.[324]

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[319] United States v. Angell, 11 F.3d 806, 809 (8th Cir. 1993).
[320] *Ward*, 23 F.3d at 1305.
[321] State v. Klamar, 823 N.W.2d 687, 692 (2012).
[322] *Id*. at 693.
[323] State v. Timberlake, 726 N.W.2d 509, 512 (2007).

"Seizure" is constitutional if police officer had "particularized and objective basis" for suspecting particular persons seized of criminal activity; police officer must have more than "hunch" and must be able to point to something that objectively supports his suspicion.[325]

Police officer may make assessment of reasonable suspicion for investigatory stop on basis of all circumstances, and may draw inferences and deductions that might elude untrained person, though officer must be able to point to objective facts and may not base conclusion on "hunch."[326]

Probable Cause to Arrest

An objective standard is used to determine the lawfulness of an arrest, taking into account the totality of the circumstances to determine whether the police could reasonably believe that a crime has been committed by the defendant.[327]

In order to establish probable cause for a search, the police must show that they reasonably could have believed that a crime has been committed by the person to be arrested.[328]

MISSISSIPPI

Summary:

Mississippi has three articulated levels of police citizen interactions:[329]

1. Voluntary conversation

2. Investigative, or *Terry*, stop

3. Arrest

There is no mention of *De Bour* in case law or opinion.

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[324] State v. Cripps, 533 N.W.2d 388, 391 (1995).
[325] Kranz v. Commissioner of Public Safety, 539 N.W.2d 420, 422 (1995).
[326] *Cripps*, 533 N.W.2d at 391.
[327] State v. Perkins, 588 N.W.2d 491, 492 (1999).
[328] State v. Johnson, 689 N.W.2d 247, 251 (2004).
[329] State v. Johnson, 427 S.W.3d 867, 872 (2014).

Voluntary Conversation

So long as a person feels free to disregard the police and go about his business, the encounter would be considered consensual, with no reasonable suspicion required.[330]

A suspect is seized only if, in view of all of the circumstances surrounding the incident, a reasonable person would have believed that he was not free to leave.[331]

Investigative or Terry Stop

Before conducting an investigatory, or *Terry* stop, officers are required to have reasonable suspicion, grounded in specific and articulable facts, that a person they encounter was involved in a felony or some objective manifestation that the person stopped is or is about to be engaged in criminal activity.[332]

Reasonable suspicion for an investigative stop can arise from an officer's personal observations, a tip by a trusted police informant, or by anonymous tip.[333]

Police officers may initiate an investigatory stop when they have reasonable suspicion, grounded in specific articulable facts, that allows the officers to conclude the suspect is wanted in connection with criminal behavior.[334]

Arrest

To make an arrest, probable cause is needed.[335]

MISSOURI

Summary:

Missouri has three levels of police citizen encounters:[336]

[330] Cooper v. State, 145 So. 3d 1164, 1171 (Miss. 2014).
[331] *Id*.
[332] *Cooper*, 145 So. 3d at 1168.
[333] *Id*.
[334] Johnson v. State, 194 So. 3d 191, 201 (Miss. 2016).
[335] Baxter v. State, 177 So. 3d 423, 432 (Miss. 2014).

1. Consensual encounters

2. Investigatory stops

3. Arrests

There is no mention to *De Bour* in case law or opinion.

Consensual Encounters

An encounter is only consensual if a reasonable person would feel free to disregard the police and go about their business; if the reasonable person does not believe they are free to leave, then the encounter is not consensual.[337]

While an officer does not need to inform a suspect that they are free to leave in order for the encounter to become consensual, that option must be apparent from the circumstances.[338]

A police officer is free to question an individual, even without reasonable suspicion of criminal activity, if the encounter is consensual.[339]

Subject to only a few specific and well-delineated exceptions, warrantless searches and seizures conducted without probable cause are deemed *per se* unreasonable.[340]

When police officers, without a warrant, knock on a door and request to speak with the occupant, even if an occupant chooses to open the door and speak with the officers, the occupant need not allow the officers to enter the premises, and they may refuse to answer any questions at any time.[341]

After completing a routine traffic stop, issuing a ticket and returning licensing documents, the interaction at this point becomes consensual.[342]

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[336] *See* Terry v. Ohio, 392 U.S. 1, 30 (1968); *see also* United State v. Jones, 432 F.3d 34, 41 (1st Cir. 2005).
[337] State v. Sund, 215 S.W.3d 719, 723-24 (2007).
[338] State v. Shoults, 159 S.W.3d 441, 446 (2005).
[339] State v. Granado, 148 S.W.3d 309, 312 (2004).
[340] State v. Flowers, 420 S.W.3d 579, 581 (2013).
[341] State v. Hastings, 450 S.W.3d 479, 487 (2014).
[342] State v. Abercrombie, 229 S.W.3d 188, 193 (2007).

Investigative Stop –Reasonable Suspicion

The Fourth Amendment is not offended when a brief stop followed by a pat-down of frisk for weapons occurs and is based upon reasonable suspicion supported by articulable facts that the person stopped is engaged in criminal activity.[343]

Reasonable suspicion will be evaluated by examining the totality of the circumstances.[344]

Reasonable suspicion justifying a stop can under certain circumstances, be based on facts that the officer did not personally observe.[345]

One exception to the warrant requirement is that an officer may stop a person without a warrant to conduct "a brief investigative detention if the officer has a reasonable suspicion, based on specific and articulable facts, that illegal activity has occurred or is occurring."[346]

A routine traffic stop if supported by an officer's observation of a violation of state law is a reasonable seizure under the Fourth Amendment. This does not permit indefinite detention, but only long enough necessary for the officer to conduct a reasonable investigation of the traffic violation.[347]

Police officers are permitted to ask a moderate number of questions to determine the person's identity and to obtain information confirming or dispelling the officer's suspicion.[348]

An anonymous tip by itself seldom, if ever, provides reasonable suspicion that a person has committed a crime warranting a *Terry* stop.[349]

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[343] State v. Carr, 441 S.W.3d 166, 169 (2014) (citing Terry v. Ohio, 392 U.S. 1, 30 (1968)).
[344] State v. Waldrup, 331 S.W.3d 668, 674 (2001); *see also* State v. Stover, 338 S.W.3d 138 (2012).
[345] State v. Miller, 894 S.W.2d 649, 652–53 (1995).
[346] *Id*. (quoting State v. Norfolk, 366 S.W.3d 528, 533 (2012)); *see also* State v. Nebbit, 455 S.W.3d 79 (2014).
[347] State v. Barks, 128 S.W.3d 513, 516 (2004).
[348] *Stover*, 388 S.W.3d at 150 (citing Berkemer v. McCarty, 468 U.S. 420, 439 (1984)).
[349] State v. Weddle, 18 S.W.3d 389, 393 (2000) (citing Alabama v. White, 496 U.S. 325, 329 (1990)).

Reasonable suspicion can be satisfied if the police independently corroborate the anonymous tip such that it exhibits sufficient indicia of reliability to make the investigatory stop.[350]

Law enforcement officers are legally permitted to knock on the door of a private residence and seek consent to enter and search without probable cause of a warrant.[351]

Probable Cause to Arrest

Probable cause exists when police officers, relying on reasonably trustworthy facts and circumstances, have information upon which a reasonably prudent person would believe the suspect had committed or was committing a crime.[352]

Probable cause does not require evidence sufficient to convict, but merely enough to warrant a reasonable belief that the individual engaged in criminal activity.[353]

MONTANA

Summary:

Montana has no delineated tiers of police citizen encounters.

There is no mention of *De Bour* in case law or opinion.

Fourth Amendment Not Triggered

Particularized suspicion is not needed for routine citizen police encounters.[354]

Following suit of other states, routine police encounters include stopping an individual to ask questions, identification, etc. as long as the individual is free to leave.[355]

[350] State v. Flowers, 420 S.W.3d 579, 582 (2013).
[351] State v. Cromer, 186 S.W.3d 333, 342 (2005).
[352] United State v. Jones, 432 F.3d 34, 41 (1st Cir. 2005).
[353] *Id*. at 43.
[354] State v. Wagner, 68 P.3d 840, 846 (2003).
[355] State v. Dupree, 346 P.3d 1114, 1118 (2015).

Additionally, Montana has a "community caretaker doctrine" that is an exception to the warrant requirement under Montana law.[356]

In order for this type of encounter to occur there needs to be "objective, specific, and articulable facts from which an experienced officer would suspect that a citizen is in need of help or is in peril, then that officer has the right to stop and investigate."[357]

If an officer realizes that an individual is no longer in need of help, or has rectified the situation, any further action is deemed to be a seizure.[358]

Investigative Stops – Reasonable Suspicion

Montana requires that in order for an officer to conduct an investigative stop s/he must have "'particularized suspicion' a person 'has committed, is committing, or is about to commit an offense' before effecting an investigative stop of the person."[359]

The Montana Supreme Court considers that the facts and circumstances surrounding the seizure under the totality of the circumstances when determining the reasonableness of an investigative stop.[360]

An officer is required to develop his or her particularized suspicion on: "objective data from which an experienced police officer man make certain inferences; and a resulting suspicion that the person to be stopped as committed or is about to commit an offense."[361]

Probable Cause to Arrest

A person is seized if under the totality of the circumstances "a reasonable person would not have felt free to leave."[362]

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[356] State v. Gram, 175 P.3d 885, 890 (2007).
[357] State v. Spaulding, 259 P.3d 793, 799 (2011); State v. Lovegren, 51 P.3d 471, 475-76 (2002).
[358] *Spaulding*, 259 P.3d at 799.
[359] *Dupree*, 346 P.3d. at 1117.
[360] *Id*.
[361] See State v. Gopher, 631 P.2d 293, 296 (1981).
[362] State v. Clayton, 45 P.3d 30, 34 (2002).

A seizure only occurs by a show of physical force or authority that has some way restrained a person's liberty.[363]

NEBRASKA

Summary:

Nebraska has three levels of police-citizen encounters:[364]

1. Voluntary stops

2. Investigatory stops

3. Arrests

There is no mention of *De Bour* in case law or opinion.

Voluntary Stop

A person has been seized within the meaning of the Fourth Amendment only when, in view of the totality of the circumstances surrounding the incident, a reasonable person would have believed that he or she was not free to leave.[365]

Investigatory stop – Stop and Frisk – Reasonable Suspicion

A "tier-two police-citizen encounter" constitutes an "investigatory stop," for the purposes of the federal and state constitutional protections against unreasonable search and seizure, and involves a brief, nonintrusive detention during a frisk for weapons or preliminary questioning.[366]

When conducting an investigatory stop, a police officer must employ the least intrusive means reasonably available to verify or dispel the officer's suspicion in a short period of time.[367]

[363] *State v. Dupree*, 346 P.3d. 1114, 1117 (2015).
[364] *See, e.g.,* State v. Runge, 601 N.W.2d 554 (1999); State v. Wells, 859 N.W.2d 316 (2015).
[365] State v. Thompson, 166 P.3d 1015, 1030-31 (2007) (citing United States v. Mendenhall, 446 U.S. 544, 553 (1980)).
[366] *Wells*, 859 N.W.2d at 326.
[367] *Id.*

In determining whether the detention was reasonable under the circumstances, for the purposes of analyzing whether an investigatory detention was converted to a de facto arrest, depends on a multitude of factors, including the number of officers and police cars involved; the nature of the crime and whether there was reason to believe the suspect might be armed; the strength of the officers' articulable, objective suspicions; the erratic behavior of or suspicious movements by the persons under observation; and the need for immediate action by the officers and lack of opportunity for them to have made the stop in less threatening circumstances.[368]

An investigatory stop requires only that a police officer have specific and articulable facts sufficient to give rise to a reasonable suspicion that criminal activity is afoot.[369]

Probable Cause to Arrest

An arrest is a highly intrusive detention (seizure) of a person that must be justified by probable cause.[370]

Probable cause to support a warrantless arrest exists only if a police officer has knowledge at the time of the arrest, based on information that is reasonably trustworthy under the circumstances, that would cause a reasonably cautious person to believe that a suspect has committed or is committing a crime.[371]

Probable cause to arrest is a flexible, commonsense standard that depends on the totality of the circumstances: probable cause is not defeated because a police officer incorrectly believes that a crime has been or is being committed, but implicit in the probable cause standard is the requirement that the officer's mistakes be reasonable.[372]

NEVADA

[368] *Id.*
[369] *Id.*
[370] State v. Matit, 846 N.W.2d 232, 237 (2014).
[371] *Id.* at 238.
[372] *Id*.

Summary:

Nevada has three levels of police citizen encounters:[373]

1. Consensual encounters

2. Detentions

3. Arrests

There is no mention of *De Bour* in their opinions or decisions.

Consensual Encounters

Pursuant to the Fourth and Fourteenth Amendments of the United States Constitution, the "seizure" of a person without probable cause or a warrant is "*per se* unreasonable ... subject only to a few specifically established and well-delineated exceptions."[374]

As such, not all interactions between policemen and our citizenry involve the "seizure" of persons.[375]

Similarly, courts have held that "[t]he police may randomly—without probable cause or a reasonable suspicion—approach people in public places and ask for leave to search."[376]

Mere police questioning does not constitute a seizure.[377]

To establish a lawful search based on consent, the State must demonstrate that consent was voluntary and not the result of duress or coercion.[378]

Voluntariness is determined by ascertaining whether a reasonable person in the defendant's position, given the totality of the circumstances, would feel free to decline a police officer's request or otherwise terminate the encounter.[379]

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[373] Arterburn v. State, 901 P.2d 668, 670 (1995) (citing U.S. v. Hooper, 935 F.2d 484, 490 (2d Cir. 1991).
[374] State v. Burkholder, 915 P.2d 886, 888 (1996) (citing Katz v. United States, 389 U.S. 347, 357(1967)).
[375] *Id*. at 888 (citing Terry v. Ohio, 392 U.S. 1, 19 n. 16 (1968)).
[376] *Id.*
[377] *Id.*
[378] *Id.* (citing Schneckloth v. Bustamonte, 412 U.S. 218, 248 (1973)).
[379] *Id.*

The test is necessarily imprecise, because it is designed to assess the coercive effect of police conduct, taken as a whole, rather than to focus on particular details of that conduct in isolation.[380]

Detention

"Only when the officer, by means of physical force or show of authority, has in some way restrained the liberty of a citizen may we conclude that a 'seizure' has occurred."[381]

So long as a reasonable person would feel free "to disregard the police and go about his business," the encounter is consensual.[382]

Whether an investigatory stop has become a full-fledged arrest, requiring probable cause, depends in part on the duration of the detention. An investigative detention must be temporary and last no longer than is necessary to effectuate the purpose of the stop.[383]

Any peace officer may detain any person whom the officer encounters under certain circumstances, which reasonably indicate that the person has committed, is committing or is about to commit a crime.[384]

Any peace officer may detain any person the officer encounters under circumstances which reasonably indicate that the person has violated or is violating the conditions of the person's parole or probation.[385]

The officer may detain the person pursuant to this section only to ascertain the person's identity and the suspicious circumstances surrounding the person's presence abroad. Any person

[380] State v. Burkholder, 915 P.2d 886, 888 (1996) (citing Michigan v. Chesternut, 486 U.S. 567, 573, (1988)).
[381] *Id.* at 889 (citing Terry v. Ohio, 392 U.S. 1, 19 n. 16 (1968)).
[382] *Id.* at 889 (quoting California v. Hodari D., 499 U.S. 621, 628 (1991)).
[383] Arterburn v. State, 901 P.2d 668, 670 (1995) (citing United States v. Mondello, 927 F.2d 1463, 1471 (9th Cir. 1991); *see also* United States v. Del Vizo, 918 F.2d 821, 824 (9th Cir. 1990) (in determining whether detention has ripened into arrest, "[t]here has been an arrest if, under the circumstances, a reasonable person would conclude that he was not free to leave after brief questioning").
[384] NEV. REV. STAT. §171.123 (1995).
[385] *Id.*

so detained shall identify himself or herself, but may not be compelled to answer any other inquiry of any peace officer.[386]

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.[387]

Arrests

An officer may make a felony arrest without a warrant to offenses committed in their presence, or to instances where they have reasonable cause to believe that the person arrested has committed a felony.[388]

NEW HAMPSHIRE

Summary:

New Hampshire has three defined levels of police citizen encounters:[389]

1. Consensual encounters

2. Investigative detentions

3. Arrests

There is no mention of *De Bour* in case law or opinion.

Consensual Encounters

Not every encounter between a police officer and an individual is a seizure subject to constitutional protection.[390]

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[386] *Id.*
[387] *Id.*
[388] NEV. REV. STAT. §171.24 (1995); Washington v. State, 576 P.2d 1126, 1128 (1978); *see also* Mapp v. Ohio, 367 U.S. 643 (1961).
[389] *See* State v. Beauchesne, 868 A.2d 972 (2005); State v. Giddens, 922 A.2d 650 (2007); Hartgers v. Town of Plaistow, 681 A.2d 82 (1996).

A seizure does not occur simply because a police officer approaches an individual and asks a few questions; this is true so long as a reasonable person would feel free to disregard the police and go about his business.[391]

Defendant was not subject to seizure when police officer approached the car in which he was slouched down, and thus encounter was consensual before officer noticed signs of intoxication and ordered defendant out of his car, where officer parked his cruiser away from the defendant's vehicle and shone his flashlight into defendant's car, but did not turn on his blue lights, did not draw his weapon, did not tap on the window, and did not order the defendant to step out of the car, or even to roll down his window, but rather asked if the defendant was "all set."[392]

Investigative Detentions – Reasonable Suspicion

The facts that create a sufficient basis to support an investigative stop need not reach the level of those required to support either an arrest or a finding of probable cause.[393]

To determine the sufficiency of a police officer's suspicion of criminal activity, as justification for an investigatory stop, the court must consider the facts the officer articulated in light of all of the surrounding circumstances.[394]

To undertake an investigatory stop, a police officer must have reasonable suspicion, based upon specific, articulable facts taken together with rational inferences from those facts, that the particular person stopped has been, is, or is about to be engaged in criminal activity.[395]

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[390] State v. Szczerbiak, 807 A.2d 1219, 1224 (2002).
[391] State v. Beauchesne, 868 A.2d 972, 977 (2005).
[392] State v. Licks, 914 A.2d 1246, 1248 (2006).
[393] State v. Giddens, 922 A.2d 650, 656 (2007).
[394] *Id*.
[395] *Id*.

A temporary detention is lawful if the police have an articulable suspicion that the person detained has committed or is about to commit a crime; reasonable articulable suspicion refers to suspicion based upon specific, articulable facts taken together with rational inferences from those facts.[396]

Not all interactions between police and citizens involve a seizure of the person.[397]

Police may temporarily detain a suspect for investigatory purposes on grounds that do not amount to probable cause to arrest him for commission of a crime.[398]

In deciding whether a police officer conducted a lawful investigatory stop, the Supreme Court conducts a two-step inquiry; first, the Supreme Court determines when the defendant was seized, and second, the Supreme Court determines whether, at that time, the officer possessed a reasonable suspicion that the defendant was, had been, or was about to be engaged in criminal activity.[399]

Probable Cause to Arrest

Probable cause to arrest exists when arresting officer has knowledge and trustworthy information sufficient to warrant person of reasonable caution and prudence in believing that arrestee has committed an offense.[400]

NEW JERSEY

Summary:

New Jersey has three levels of police citizen encounters: [401]

[396] State v. Livingston, 897 A.2d 977, 982 (2006).
[397] State v. Beauchesne, 868 A.2d 972, 977 (2005).
[398] State v. Reid, 605 A.2d 1050, 1052 (1992).
[399] State v. Pepin, 920 A.2d 1209, 1211 (2007).
[400] Hartgers v. Town of Plaistow, 681 A.2d 82, 84 (1996).

1. Field investigation or community caretaker

2. Investigatory detention

3. Arrest

Three are three cases that cite *De Bour*:

1. *State in the Interest of H.B.*, 381 A.2d 759, 769 (1977).[402]

2. *State v. Williams*, 598 A.2d 1258, 1269 (1991).[403]

3. *State v. Goree*, 742 A.2d 1039, 1049-50 (2000).[404]

Field Investigation or Community Caretaker

A Field Inquiry is a limited form of police investigation that, except for impermissible reasons such as race, may be conducted 'without grounds for suspicion.' As a general rule, a police officer properly initiates a field inquiry by approaching an individual on the street, or in another public place, and by asking him if he is willing to answer some questions. A permissible inquiry occurs when an officer questions a citizen in a conversational manner that is not harassing, overbearing, or accusatory in nature.[405]

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[401] State v. Sirianni, 790 A.2d 206, 210 (2002) (citing State v. Rodriguez, 765 A.2d 770 (2001)); See also Florida v. Royer, 460 U.S. 491, 497–99 (1983); State v. Maryland, 771 A.2d 1220 (2001); State v. Alexander, 468 A.2d 713 (1983).

[402] "Where the only information that is susceptible of corroboration is a vague, physical description of an unnamed and unidentified individual, this alone cannot trigger a stop and frisk." People v. Stewart, 41 N.Y.2d 65 (1976); People v. La Pene, 40 N.Y.2d 210 (1976)."

[403] "The 'precipitate frisk' in *La Pene* was based on information 'couched in vague and general terms' (black man in red shirt); no attempt was made to ascertain whether others present fit this description; and the court specifically found no 'exigency' justifying a limited protective frisk. In Wynn also the information was ambiguous, concerning a man walking on the street 'possibly armed with a gun,' there being 'no report that the man had a gun.'" People v. La Pene, 40 N.Y.2d 210 (1976); People v. Wynn, 54 A.D.2d 366 (2d. Dept. 1976).

[404] The informant in *Adams* told the officer "that an individual seated in a nearby vehicle was carrying narcotics and had a gun at his waist, early in the morning in a high-crime area of Bridgeport, Connecticut." Adams v. Williams, 407 U.S. 443, 444 (1972). And the commentators seem to agree that *Adams* was about the closest case of this type in which the government could prevail. See discussion, 4 LAFAVE, SEARCH AND SEIZURE, § 9.4(h) at 213, 230 (3d ed. 1996), especially cases collected at 222, fn. 391. E.g., People v. De Bour, 40 N.Y.2d 210 (1976) (anonymous call that black man in bar with red shirt had gun insufficient; Court of Appeals said anonymous tips "are of the weakest sort since no one can be held accountable if the information is in fact false.")

[405] State v. Diloreto, 850 A.2d 1226, 1233 (2004).

The community caretaker doctrine provides a basis to excuse the warrant requirement, and applies when the police are engaged in functions, which are totally divorced from the detection, investigation, or acquisition of evidence relating to the violation of a criminal statute.[406]

Neither a field inquiry nor community caretaker function requires that the police demonstrate probable cause or an articulable suspicion to believe that evidence of a crime will be found. When courts review these types of citizen-police encounters they "employ a standard of reasonableness to determine the lawfulness of police conduct."[407]

The police do not violate the Fourth amendment by "merely approaching an individual on the street or in another public place, by asking him if he is willing to answer some questions, by putting questions to him if he is willing to listen, or by offering as evidence in a criminal prosecution his voluntary answers to such questions."[408]

Investigatory Detention- Reasonable Suspicion

An officer would not be deemed to have seized a person if:

(1) his questions were put in a conversational manner,

(2) if he did not make demands or issue orders, and

(3) if his questions were not overbearing or harassing in nature.[409]

A police officer charged with the duty of crime prevention and detection of the public safety must deal with a rich diversity of street encounters with citizens. Even though a citizen's

[406] *Id*. at 1233.
[407] *Id*. (quoting KEVIN G. BYRNES, NEW JERSEY ARREST, SEARCH AND SEIZURE § 14:1-1 at 289 (2003)).
[408] State v. Davis, 517 A.2d 859, 863 (1986) (citing Florida v. Royer, 460 U.S. 491, 497 (1983)).
[409] State ex rel. J.G., 726 A.2d 948, 952 (1999) (quoting. *Davis*, 517 A.2d at 865).

behavior does not reach the level of highly suspicious activities, the officer's experience may indicate that some investigation is in order.[410]

Even a brief detention short of traditional arrest must be founded on constitutionally recognized objective justification.[411]

A seizure occurs if, in view of all of the circumstances surrounding the incident, a reasonable person would have believed that he or she was not free to leave.[412]

Not every detention is an arrest. The test is whether a reasonable person in the suspect's position would have thought the detention would not be temporary. It is the reasonable belief of an ordinary person under such circumstances, and not the subjective belief or intent of the officer, that determines whether an arrest has been effected.[413]

Probable Cause to Arrest

The determination of whether a detention amounts to a custodial arrest is a mixed question of fact and law, and we construe the evidence most favorably to uphold the trial court's findings and accept those findings unless they are clearly erroneous, but we independently apply the legal principles to those facts.[414]

A warrantless arrest may be made only when the probable cause necessary for a constitutional arrest under the federal constitution is present.[415]

NEW MEXICO

Summary:

New Mexico has three articulated levels of police citizen encounters: [416]

[410] *Davis*, 517 A.2d at 866.
[411] State v. Bynum, 614 A.2d 156, 158 (1952); see United States v. Mendenhall, 446 U.S. 544, 551 (1980).
[412] State v. Sloane, 939 A.2d 796, 799 (2008) (quoting State v. Stovall, 788 A.2d 746, 751 (2002).
[413] State v. Holt, 780 S.E.2d 44, 49 (2015) (quoting Lewis v. State, 669 S.E.2d 558, (2008).
[414] Parker v. State, 754 S.E.2d 409, 413 (2014).
[415] Glean v. State, 486 S.E.2d 172, 175 (1997).

1. Consensual encounters

2. Investigatory detentions

3. Arrests.

There is no mention of *De Bour* in case law or opinion.

Consensual Encounters

A seizure does not occur simply because a police officer approaches an individual and asks a few questions. The Fourth Amendment of the United States Constitution permits a police officer to approach an individual and ask a moderate number of questions "in order to investigate possible criminal behavior when the officer has a reasonable suspicion that the law has been or is being violated."[417]

The reasonableness of such conduct depends on whether the legal standards that justify the community caretaker exception are satisfied, which as the Court of Appeals has observed, depends on particular facts, which may or may not involve a consensual encounter. Community caretaker function usually involves vehicle encounters, but has been extended to home intrusions.[418]

To determine whether a police-citizen encounter is consensual, we consider "the totality of the circumstances surrounding the encounter [to ascertain whether] the police conduct would have communicated to a reasonable person that the person was not free to decline the officers' requests or otherwise terminate the encounter."[419]

Investigatory Detentions

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[416] State v. Ryon, 108 P.3d 1032, 1041 (2005).
[417] State v. Taylor, 973 P.2d 246, 249 (1999).
[418] See generally State v. Nemeth, 23 P.3d 936 (2001).
[419] State v. Walters, 934 P.2d 282, 286 (1997).

In appropriate circumstances and in an appropriate manner a police officer may approach a person for purposes of investigating possible criminal behavior, even though there is no probable cause to make an arrest.[420]

An investigatory stop must be supported by a particularized suspicion, based on the totality of the circumstances known to the officer, that the particular individual being stopped is engaged in wrongdoing or was involved in a completed felony.[421]

"Consent is an exception to the Fourth Amendment probable cause and reasonable suspicion requirements that police often rely on to investigate suspected criminal activity."[422]

Contact becomes a seizure when police restrain the liberty of a person "by means of physical force or show of authority."[423]

A seizure occurs when there is either a "use of physical force by an officer or submission by the individual to an officer's assertion of authority."[424]

In appropriate circumstances, a police officer may detain a person in order to investigate possible criminal activity, even if there is no probable cause to make an arrest.[425]

Such circumstances must arise from the police officer's reasonable suspicion that the law is being or has been broken.[426]

A reasonable suspicion is a particularized suspicion, based on all the circumstances that a particular individual, the one detained, is breaking, or has broken, the law.[427]

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[420] State v. Watley, 788 P.2d 375, 380 (1989).
[421] *Id*. at 380.
[422] *Id*.
[423] Terry v. Ohio, 392 U.S. 1, 19 n. 16 (1968); *see also* State v. Jason L., 2 P.3d 856 (2000) (holding that a consensual encounter is transformed into a seizure when police "convey a message that compliance with their requests is required").
[424] State v. Sanchez, 114 P.3d 1075, 1078-79 (2005).
[425] State v. Eli L., 947 P.2d 162, 165 (1997).
[426] *Id*.
[427] *Jason L.*, 2 P.3d at 863.

Where there is reason for the officers to fear for their safety, they may un-holster their guns and use reasonable force in effectuating the stop without such action automatically constituting an arrest.[428]

Inarticulate hunches and unsupported intuition are insufficient to meet the reasonable suspicion standard.[429]

An officer who makes a valid investigatory stop may briefly detain those he suspects of criminal activity to verify or quell that suspicion. The scope of activities during an investigatory detention must be reasonably related to the circumstances that initially justified the stop.[430]

Arrests

When determining whether a person was seized, we evaluate (1) the circumstances surrounding the contact, including whether police used a show of authority; and (2) whether the circumstances of the contact reached "such a level of accosting and restraint that a reasonable person would have believed he or she was not free to leave."[431]

NORTH CAROLINA

Summary:

North Carolina has three levels of police citizen encounters:[432]

1. No coercion or compulsion
2. Investigative detention
3. Probable cause to arrest

[428] State v. Lovato, 817 P.2d 251, 256 (1991).
[429] State v. Galvan, 560 P.2d 550, 552 (1977); *see also* State v. Montoya, 612 P.2d 1353, 1355 (1980) (noting that "an awareness of specific articulable facts, together with rational inferences," must underlie the suspicion required to justify "intrusion into a sphere in which the defendant could maintain a reasonable expectation of privacy")
[430] State v. Werner, 871 P.2d 971, 973 (1994).
[431] State v. Affsprung, 87 P.3d 1088, 1091 (2004); State v. Scott, 126 P.3d 567, 572 (2005).
[432] *See* State v. Corpening, 683 S.E.2d 457 (2009); *see* State v. Tillett, 274 S.E.2d 361 (1981); State v. Hunter, 261 S.E.2d 189 (1980).

There is no mention of *De Bour* in case law or opinion.

No Coercion or Compulsion

Law enforcement officers do not violate the Fourth Amendment by merely approaching an individual on the street or in another public place, by asking him if he is willing to answer some questions, by putting questions to him if the person is willing to listen, or by offering in evidence in a criminal prosecution his voluntary answers to such questions, nor would the fact that the officer identifies himself as a police officer, without more, convert the encounter into a seizure requiring some level of objective justification; the person approached, however, need not answer any question put to him, and he may decline to listen to the questions at all and may go on his way.[433]

A seizure does not occur simply because a police officer approaches an individual and asks a few questions.[434]

There is no "search" within constitutional prohibition against unreasonable searches and seizures when evidence is delivered to a police officer upon request and without compulsion or coercion.[435]

Communications between police and citizens involving no coercion or detention are outside the scope of the Fourth Amendment.[436]

Persons detained briefly for routine police investigation under circumstances not justifying actual arrest are not ipso facto deprived of their constitutional rights.[437]

[433] *Corpening*, 683 S.E.2d at 459.
[434] *Id*.
[435] State v. Raynor, 219 S.E.2d 657, 659 (1975).
[436] *Corpening*, 683 S.E.2d at 459.
[437] State v. Allen, 194 S.E.2d 9, 13 (1973).

When evidence is delivered to a police officer on request and without compulsion or coercion, there is no search within constitutional prohibition against unreasonable searches and seizures.[438]

No "arrest" was effected by merely stopping police car beside defendant and getting out to talk to him.[439]

Investigative Detention

Generally, before police officer can conduct an investigatory stop and detention of individual, officer must have reasonable suspicion, based on objective facts, that individual is involved in criminal activity.[440]

Probable Cause to Arrest

Where police officer had probable cause to arrest defendant for having committed felony out of presence of officer, no arrest warrant was required.[441]

Police officers may arrest without warrant any person who they have probable cause to believe has committed felony.[442]

Probable cause to arrest exists when information known to police officer is sufficient to warrant prudent man in believing that suspect had committed or was committing offense.[443]

NORTH DAKOTA

Summary:

North Dakota has three articulated levels:[444]

1. Community Caretaking

[438] State v. Reams, 178 S.E.2d 65, 68 (1970).
[439] State v. Streeter, 195 S.E.2d 502, 506 (1973).
[440] State v. Tillett, 274 S.E.2d 361, 363 (1981).
[441] State v. Hardy, 263 S.E.2d 711, 718 (1980).
[442] State v. Hunter, 261 S.E.2d 189, 193 (1980).
[443] State v. Dickens, 484 S.E.2d 553, 558 (1997).
[444] State v. Halfmann, 518 N.W.2d 729, 730 (1994) (citing United States v. Hernandez, 854 F.2d 295 (1988)); *see also* Thompson v. State, 797 S.W.2d 450 (1990); *see also* People v. Murray, 560 N.E.2d 309 (1990)).

2. Terry stops

3. Arrests

There is no mention of *De Bour* in case law or opinion.

Community Caretaking

Not all citizen-law enforcement encounters implicate a citizen's Fourth Amendment rights.[445]

For example, a community caretaking encounter does not constitute a seizure within the meaning of the Fourth Amendment.[446]

It is not a seizure for an officer to walk up to and talk to a person in a public place.[447]

Community caretaking allows law enforcement-citizen contact, including stops, without an officer's reasonable suspicion of criminal conduct.[448]

The community caretaking function is an activity "totally divorced from the detection, investigation, or acquisition of evidence relating to the violation of a criminal statute.[449]

A law enforcement officer's entry into a dwelling place cannot be justified alone on the basis that the officer acted in a community caretaking capacity.[450]

A caretaking encounter does not foreclose an officer from making observations that lead to a reasonable and articulable suspicion.[451]

A seizure occurs within the context of the Fourth Amendment only when the officer by means of physical force or show of authority, has in some way restrained the liberty of a citizen.[452]

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[445] Rist v. North Dakota Dep't of Transp., 665 N.W.2d 45, 48 (2003).
[446] State v. DeCoteau, 592 N.W.2d 579, 585 (1999).
[447] State v. Steinmetz, 552 N.W.2d 358, 359 (1996).
[448] State v. Boyd, 654 N.W.2d 392, 395 (2002).
[449] State v. Langseth, 492 N.W.2d 298, 300 (1992).
[450] State v. Gill, 755 N.W.2d 454, 459 (2008).
[451] Lapp v. Department of Transportation, 632 N.W.2d 419, 423 (2001).

Terry Stops

The reasonable-and-articulable-suspicion standard is objective, and does not hinge upon the subjective beliefs of the arresting officer.[453]

A temporary restraint of an individual's freedom, or a "*Terry* stop" is a seizure within the meaning of the Fourth Amendment.[454]

In evaluating the factual basis for an investigative stop or an arrest, we consider the totality of the circumstances.[455]

A *Terry* stop requires a dual inquiry into the reasonableness of an investigatory stop. The reviewing court must:[456]

1) determine whether the facts warranted the intrusion of the individual's Fourth Amendment rights; and if so,
2) determine whether the scope of the intrusion was reasonably related to the circumstances which justified the interference in the first place.

Arrests

An arrest is a seizure and must be supported by probable cause.[457]

OHIO

Summary:

Ohio has taken notice of *De Bour* in one case: *State v. Wood*, No. L-77-149, 1977 Ohio App. LEXIS 9878, at *1 (Dec. 23, 1977).[458]

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[452] State v. Boline, 575 N.W.2d 906, 910 (1998); State v. Halfmann, 518 N.W.2d 729, 731 (1994).
[453] *Halfmann*, 540 N.W.2d at 392–93.
[454] State v. Glaesman, 545 N.W.2d 178, 182 (1996) (citing *Halfmann*, 518 N.W.2d at 730).
[455] City of Fargo v. Ovind, 575 N.W.2d 901, 903 (1998).
[456] State v. Sarhegyi, 492 N.W.2d 284, 286 (1992).
[457] State v. Boline, 575 N.W.2d 906, 910 (1998).
[458] On balance, the governmental interest in efficient crime prevention and detection justified the initial questioning of the defendant-appellant by the officers. Camara v. Municipal Court, 387 U.S. 523 (1967); People v. Gravatt, 22 Cal. App. 3d. 133 (1972); State v. Brooks, 281 So. 2d. 55 (1973); People v. De Bour, 40 N.Y.2d 210 (1976).

Ohio has three articulated levels of police-citizen encounters.[459]

1. Consensual Encounters

2. Investigative Stops

3. Arrests

Consensual Encounters

Consensual encounters are those that involve no coercion or restrain of liberty, and therefore do not implicate the Fourth Amendment.[460]

A consensual encounter is not a seizure and, therefore, the Fourth Amendment is not implicated, as long as an officer's actions do not convert it into an investigative detention.[461]

If the police officer has by either physical force or show of authority, restrained the person's liberty so that a reasonable person would not feel free to decline the officer's requests or otherwise terminate the encounter, then the Fourth Amendment is implicated in what began as a consensual encounter.[462]

A consensual encounter occurs when a police officer approaches a citizen in public, engages that person in conversation, requests information, and that person is free to refuse to answer and walk away.[463]

A police officer may also request permission to examine the individual's identification or belongings, all without implicating Fourth Amendment rights, so long as the person is free not to answer the officer's questions or respond to their requests; and any voluntary responses given by

[459] United States v. Russ, 772 F. Supp. 2d 880, 885 (N.D. Ohio 2011).
[460] State v. Morris, 548 N.E.2d 969, 970 (1988).
[461] United States v. Russ, 772 F. Supp. 2d 880, 885 (N.D. Ohio 2011).
[462] State v. Westover, 10 N.E.3d 211, 216 (2014).
[463] State v. Willey, 46 N.E.3d 1121, 1127 (2015).

the person during these types of "consensual" police-citizen encounters may be used against them in a subsequent criminal prosecution.[464]

A person approached by a police officer for the purpose of asking questions that elicit voluntary, un-coerced responses is not required to answer any questions, and may choose to end the interaction at any point or decline to engage in the interaction altogether.[465]

A person who exercises their right to walk away, may not be detained even momentarily for their refusal to listen or answer, so long as a reasonable person would feel free to disregard the police and go about his business; if the encounter is consensual, then no reasonable suspicion is found.[466]

An individual's act of walking away, when summoned by a police officer did not justify a concern for officer safety supporting detention and search, where the individual was under no obligation to speak to officers and had the right to walk away.[467]

However, while an individual approached by a police officer without reasonable suspicion or probable cause is free to ignore the officer and go about their business, flight by such an individual provides the officer reasonable suspicion of wrong doing and permits them to stop the fleeing person to investigate.[468]

Police officers may approach a home, knock on its front door, and speak to its residents without a search warrant because that is no more than any private citizen might do.[469]

[464] State v. Jennings, 993 N.E.2d 868, 872 (2013).
[465] See State v. Hood, 27 N.E.3d 40 (2015).
[466] State v. Wehr, 20 N.E.3d 1116, 1122-23 (2014) (quoting California v. Hodari D., 499 U.S. 621, 628 (1991).
[467] State v. Abner, 957 N.E.2d 72, 78-79 (2011).
[468] See State v. Glauser, No. 2011AP100039, 2012 Ohio App. LEXIS 2844, at *1 (5th Dist. July 11, 2012).
[469] State v. Little, 21 N.E.3d 675, 681 (2014).

As such they recognize that police officers may engage citizens in conversation without such questioning necessarily becoming a detention.[470] Furthermore, the officers need not expressly inform the citizen of the right to decline cooperation, or that they are free to leave.[471]

When an officer returns to his police cruiser to check the individual's identification for active warrants, the consensual encounter became detention, and in the absence of reasonable suspicion, was an unlawful seizure.[472]

Investigative Stops

An officer may lawfully detain a suspect for a reasonable temporary investigative purpose, if the officer's reasonable suspicion of criminal activity based on specific articulable facts outweighs the resulting intrusion on the suspect's liberty and privacy.[473]

The propriety of an investigative stop must be viewed in light of the totality of the surrounding circumstances.[474]

The officer's reasonable suspicion must arise from their own observations, or from some other reliable source. For instance, an anonymous tip that a person was carrying a gun is not sufficient to justify an officer's stop and frisk of that person.[475] However, a police officer's personal observations and independent police investigation that confirm the anonymous informant's tip that an individual is armed provides sufficient reliability to justify a stop and limited search.[476]

Arrests

[470] State v. Biehl, No. 22054, 2004 WL 2806340, ¶10 (9th Dist. December 8, 2004) (citing Florida v. Royer, 460 U.S. 491, 497 (1983)).
[471] *Id.* (citing United States v. Mendenhall, 446 U.S. 544, 555 (1980)).
[472] *See* State v. Tabler, No. 14AP-386, 2015 WL 3994867, ¶37 (10th Dist. June 30, 2015).
[473] State v. MacFarland, 446 N.E.2d 1168, 1169 (1982).
[474] State v. Freeman, 414 N.E.2d 1044, 1047 (1980).
[475] State v. Smith, 839 N.E.2d 451, 454-55 (2005).
[476] State v. Woods, 455 N.E.2d 1289, 1293 (1982).

A fair and reliable determination of probable cause is a condition for any significant pretrial restrain of liberty.[477]

OKLAHOMA

Summary:

Oklahoma has no delineated tiers of police-citizen encounters.

There is no mention of *De Bour* in case law or opinion.

Fourth Amendment Not Triggered, No Suspicion

Oklahoma recognizes that not all stops will give rise to Fourth Amendment protections. Similar to other states such as casual conversations.[478]

When considering whether an individual voluntarily consents to an encounter, Oklahoma looks to the totality of the circumstances, and police are not required to inform the citizen they may terminate the encounter.[479]

To determine if an encounter is consensual the courts consider again if a reasonable person would have felt free to leave under the totality of the circumstances; and the individual is responding to "non-coercive questioning by law enforcement."[480]

Police approaching citizens in public and requesting basic information from motorists are considered to be routine encounters.[481]

Investigative Stop - Reasonable Suspicion

In order for an officer to conduct a *Terry* stop the officer must have reasonable suspicion.[482]

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[477] Evans v. Smith, 646 N.E.2d 217, 225 (1994) (citing Baker v. McCollan, 443 U.S. 137 (1979)).
[478] Coffia v. State, 191 P.3d 594, 597 (2008).
[479] See United States v. Rodriguez, 186 Fed. Appx 812, 816 (10th Cir. 2006).
[480] State v. Golins, 84 P.3d 767, 770 (2004) (quoting United States v. West, 219 F.3d 1171, 1176 (10th Cir. 2000)).
[481] State v. Feekin, 371 P.3d 1124, 1126 (2016).
[482] Knighton v. State, 912 P.2d 878, 886 (1996).

Pursuant to *Terry*, the officer must show "specific and articulable facts" that gave rise to reasonable suspicion for the stop.[483]

Oklahoma does not allow "good faith" reasoning and articulable facts to establish reasonable suspicion.[484]

An investigatory stop can rise to the level of a seizure if the individual is not free to leave during the temporary detention.[485]

Oklahoma recognizes that the purpose of investigatory stops, are to gather information that satisfies the suspicion. When determining if a [temporary] detention has occurred the Oklahoma courts strongly consider the intent of the police officer.[486]

For instance, if the intent of the officer is to ask identifying questions or to obtain more information, the officer is not restraining the individuals freedom in any way and does not constitute an arrest.[487]

Probable Cause to Arrest

The reasonableness of a seizure or arrest under the Fourth Amendment turns on the presence or absence of probable cause.[488]

The court looks at various factors to determine if the encounter rises to the level of a seizure as set out in *Terry v. Ohio*, such as: the number of officers, show of force or authority, physical contact, tone and demeanor.[489]

OREGON

Summary:

[483] Brown v. State, 989 P.2d 913, 925 (1998).
[484] Revels v. State, 666 P.2d 1298, 1300 (1983).
[485] See Leaf v. State, 673 P.2d 169 (1983).
[486] Castellano v. State, 585 P.2d 361, 365 (1978).
[487] *Id*.
[488] Case v. Eslinger, 555 F.3d 1317, 1326 (11th Cir. 2009).
[489] *See* Coffia v. State, 191 P.3d 594, 598 (2008).

There are two citations to *De Bour*: *State v. Warner*, 585 P.2d 681, 689, 691 n4. (1978);[490] and *State v. Backstand*, 313 P.3d 1084, 1113 (2013).[491]

Oregon has three levels of police-citizen encounters:

1. Conversations

2. Stops

3. Arrests

Conversations

When police ask mere information or identification without "something more," Fourth Amendment protections are not triggered.[492]

These are considered to be "mere conversations" that are "non-coercive encounters that are not seizures and, thus, require no justification under Article I, section 9."[493]

Stops

The second encounter defined as "stops" are temporary detentions. Stops are "a type of seizure that involves a temporary restraint on a person's liberty and that violates Article 1,

[490] "It seems that there are three generally recognized categories of street encounters between policeman and citizen. In descending order of justification, they are: (1) arrest, justified only by probable cause; (2) temporary restraint of the citizen's liberty (a 'stop'), justified by reasonable suspicion (or reliable indicia) of the citizen's criminal activity; and (3) questioning without any restraint of liberty (mere conversation), requiring no justification." *Compare*, however, People v. De Bour, 386 N.Y.2d 375 (1975), which appears to fall somewhere in the continuum from neutral encounter to arrest, but exactly where it is difficult to say.

[491] "The [Community Caretaking] test from *State v. Lovegren*, 51 P.3d 471, 475–76 (2002) and principles underlying it make good sense to me. They have the advantage of being practical in relation to a rational understanding of police duties and being more workable in the trenches than some other efforts to define and apply additional categories of permissible police-citizen encounters. *See e.g. People v. De Bour*, 352 N.E.2d 562 (1976)."

[492] State v. Graves, 373 P.3d 1197, 1201 (2016).

[493] *Id*. (citing State v. Ashbaugh, 244 P.3d 360, 366 (2010) Article 1, Section 9 of the Oregon Constitution defines unreasonable searches or seizures: "No law shall violate the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable search, or seizure; and non-warrant shall issue but upon probable cause, supported by oath, or affirmation, and particularly describing the place to be searched and the person or thing to be seized." OR. REV. STAT. ANN. Art. I §9 (West 2014)).

section 9, unless justified by, for example, necessities of a safety emergency or by reasonable suspicion that the person has been involved in criminal activity."[494]

Oregon also has a specific statute specifically for investigative stops:

(1) A peace officer who reasonably suspects that a person has committed or is about to commit a crime may stop the person and, after informing the person that the peace officer is a peace officer, make a reasonable inquiry.

(2) The detention and inquiry shall be conducted in the vicinity of the stop and for no longer than a reasonable time.

(3) The inquiry shall be considered reasonable if it is limited to:

    a. The immediate circumstances that aroused the officer's suspicion;

    b. Other circumstances arising during the course of the detention and inquiry that give rise to a reasonable suspicion of criminal activity; and

    c. Ensuring the safety of the officer, the person stopped or other person present, including an inquiry regarding the presence of weapons.

(4) The inquiry may include a request for consent to search in relation to the circumstances specified in subsection (3) of this section or to search for items of evidence otherwise subject to search or seizure under ORS 133.535.

(5) A peace officer making a stop may use the degree of force reasonably necessary to make the stop and ensure the safety of the peace officer, the person stopped, or other persons who are present.[495]

[494]. *Ashbaugh*, 244 P.3d at 366.
[495] OR. REV. STAT. ANN. §131.615 (West 2014).

The court uses the objective standard developed in *Terry v. Ohio* to determine whether if officers of reasonable caution would have believed actions taken during a investigatory stop were appropriate.[496]

Arrests

Oregon defines arrests as conduct that restrains an individual's liberty "that are steps towards charging individuals with a crime and which under Article I, section 9, must be justified by probable cause to believe that the arrested individual has" committed a crime.[497]

The Oregon Supreme Court stated that a person is seized under Oregon's constitution if: "(a) If a law enforcement officer intentionally and significantly restricts, interferes with, or otherwise deprives an individual of that individual; or (b) if a reasonable person under the totality of the circumstances would believe that 9a) above has occurred."[498]

PENNSYLVANIA

Summary:

Pennsylvania has three levels of police citizen interactions:

1. Mere encounter

2. Investigative detention

3. Custodial detention

There are two mentions of *De Bour: Commonwealth v. Williams*, 429 A.2d 698, 700 (1981);[499] *United States v. Jones*, 657 F. Supp. 492, 499 (W.D. Pa. 1987).[500]

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[496] State v. Ehly, 854 P.2d 421, 435 (1993).
[497] *Ashbaugh*, 244 P.3d at 366.
[498] *Id*. at 370.
[499] In striking the balance between the constitutionally protected interests of the private citizen to be free of unreasonable searches and seizures and the governmental interests which sometimes justify official intrusion upon those interests, courts have identified three levels of governmental intrusion which require an increasing degree of justification to withstand constitutional scrutiny. *See generally* People v. De Bour, 40 N.Y.2d 210 (1976).
[500] The "narrow scope" of the *Terry* exception does not permit a frisk for weapons on less than reasonable belief or suspicion directed at the person to be frisked, even though that person happens to be on premises where an

Mere Encounter

No level of suspicion required.[501]

Carries no official compulsion for the citizen to stop or respond. [502]

Instances of police questioning of a citizen that involve no seizure or detention aspect, which are mere consensual encounters, need not be supported by any level of suspicion to maintain validity.[503]

Investigatory Detention –Reasonable Suspicion

Police officer yelling at defendant to turn off his car constitutes an investigative detention.[504]

A police-civilian encounter becomes a "stop" if under all the circumstances, "a reasonable man, innocent of any crime, would have thought (he was being restrained) had he been in the defendant's shoes."[505]

The line between a mere encounter and an investigative detention cannot be precisely drawn given the myriad daily situations in which police and citizens confront each other on the street. In order to distinguish between an investigative detention and a mere encounter the test is whether, considering all the facts and circumstances surrounding an interaction between a police officer and an individual, a reasonable individual would have thought he was being restrained by the police officer. If so, then an investigative detention has occurred.[506]

Custodial Detention

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authorized narcotics search is taking place. *See also* Commonwealth v. Anderson, 481 Pa. 292, 392 A.2d 1298 (1978); People v. LaPene, 40 N.Y.2d 210, 222–226, (1976) (both forbidding, on federal constitutional grounds, *Terry* stops based on anonymous tips containing general descriptions that could apply to any number of people in a bar).

[501] Commonwealth v. Conte, 931 A.2d 690, 692 (2007).
[502] Commonwealth v. Thompson, 93 A.3d 478, 484 (2014).
[503] Commonwealth v. Lyles, 97 A.3d 298, 302 (2014).
[504] Commonwealth v. Gutierrez, 36 A.3d 1104, 1107 (2012).
[505] Commonwealth v. Mendenhall, 715 A.2d 1117, 1120 (1998).
[506] *Id.* at 1120.

Arrest; Must be supported by probable cause.[507]

RHODE ISLAND

Summary:

Rhode Island has no delineated tiers of police-citizen interaction.

There is no mention of *De Bour* in case law or opinion.

Fourth Amendment Not Triggered

Investigative Stops – Reasonable Suspicion

Unlike most states, Rhode Island has a specific statute regarding temporary detentions of individuals. Rhode Island's statute for temporary detentions states:

> A peace officer may detain any person abroad whom he or she has reason to suspect is committing, has committed, or is about to commit a crime, and may demand of the person his or her name, address, business abroad, and destination; and any person who fails to identify himself or herself and explain his or her actions to the satisfaction of the peace officer may be further detained and further questioned and investigated by any peace officer; provided, in no case shall the total period of detention exceed two (2) hours, and the detention shall not be recorded as an arrest in any official record. At the end of the detention period the person so detained shall be released unless arrested and charged with a crime.[508]

This statute distinguishes detentions from arrests.[509]

Officers are required to have reasonable suspicion in order to conduct an investigative stop.[510]

Terms like "articulable reasons" and "founded suspicion" are not self-defining; they fall short of providing clear guidance dispositive of the myriad factual situations that arise. But the essence of all that has been written is that the totality of the circumstances—the whole picture—

[507] *See generally* Commonwealth v. Ellis, 662 A.2d 1043 (1995).
[508] 7 R.I. GEN. LAWS ANN. §12-7-1 (West 2016).
[509] *See* Kavanagh v. Stenhouse, 93 R. I. 252 (1961).
[510] State v. Abdullah, 730 A.2d 1074, 1076 (R.I. 1999).

must be taken into account. Based upon that whole picture the detaining officers must have a particularized and objective basis for suspecting the particular person stopped of criminal activity.[511]

Probable Cause to Arrest

A seizure only occurs when the "officer by means of physical force or show of authority, has in some way restrained the liberty of a citizen."[512]

SOUTH CAROLINA

Summary:

South Carolina has no delineated tiers of police citizen encounters.

There is no mention of *De Bour* in case law or opinion.

Fourth Amendment Not Triggered

So long as person approached and apprehended by law enforcement official remains free to disregard officer's questions and walk away, no intrusion upon person's liberty or privacy has taken place and, therefore, no constitutional justification for encounter is necessary.[513]

Investigative Detentions – Reasonable Suspicion

The police may frisk a person stopped for investigative purposes only where they have a reasonable belief the person stopped is armed and dangerous; a reasonable person in the position of the officer must believe the frisk was necessary to preserve the officer's safety.[514]

The police may briefly detain and question a person upon a reasonable suspicion, short of probable cause for arrest, that the person is involved in criminal activity.[515]

Probable Cause to Arrest

[511] United States v. Cortez, 449 U.S. 411, 417 (2005); *see, e.g.*, Brown v. Texas, 443 U.S. 47, 51 (1979)).
[512] State v. Johnson, 414 A.2d 477, 479 (1980) (citing Terry v. Ohio, 392 U.S. at 19 n.16 (1968)).
[513] State v. Rodriquez, 476 S.E.2d 161, 165 (1996).
[514] State v. Fowler, 471 S.E.2d 706, 708 (1996).
[515] State v. Abrams, 471 S.E.2d 716, 717 (1996).

Probable cause to arrest without a warrant exists when the circumstances within the arresting officer's knowledge are sufficient for a reasonable person to believe a crime has been committed by the person to be arrested.[516]

In determining whether probable cause exists for a warrantless arrest, all the evidence within the arresting officer's knowledge may be considered, including the details observed while responding to information received.[517]

Probable cause for a warrantless arrest turns not on the individual's actual guilt or innocence, but on whether facts within the officer's knowledge would lead a reasonable person to believe the individual arrested was guilty of a crime.[518]

SOUTH DAKOTA

Summary:

South Dakota has no delineated tiers of police citizen interaction. They also recognize the consensual nature of stops and the community caretaker function.

There is no mention of *De Bour* in their opinions or case law.

Fourth Amendment Not Triggered

A warrantless seizure of a vehicle on the basis of caretaking functions, which are "totally divorced from the detection, investigation, or acquisition of evidence relating to the violation of a criminal" are constitutional.[519]

Since that ruling, many courts, including South Dakota, have expanded this warrant exception to include more than just vehicles but also home intrusions.[520]

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[516] State v. Manning, 734 S.E.2d 314, 319 (2012).
[517] *Id*.
[518] *Id*.
[519] Cady v. Dombrowski, 413 U.S. 433, 441 (1973).
[520] State v. Deneui, 775 N.W.2d 221, 236 (2009); *see* United States v. Quezada, 448 F.3d 1005 (8th Cir. 2006).

Many courts have linked it with the emergency doctrine in practice, but note that the officers were exercising their community caretaking function.[521]

Not every encounter between a citizen and the police constitutes a Fourth Amendment seizure. Only when an officer, by means of physical force or show of authority, has in some way restrained the liberty of a citizen may a court conclude that a 'seizure' has occurred.[522]

So long as a reasonable person would feel free to disregard the police and go about their business, the encounter is consensual and no reasonable suspicion is required.[523]

A police officer, in performing his official work, may properly question persons when the circumstances reasonably indicate that it is necessary to the proper discharge of their duties.[524]

Investigative Stop - Reasonable Suspicion

A vehicle stop implicates the Fourth Amendment of the U.S. Constitution. The action constitutes a seizure even though the purpose of the stop is limited and the detention is brief.[525]

An officer's reasonable suspicion of criminal activity is an exception to the warrant requirement for investigative detentions.[526]

An officer must have a specific and articulable suspicion of a violation of law to support a stop of an individual.[527]

The factual basis required to support a stop for a "routine traffic check" is minimal- all that is required is that the stop be not the product of mere whim, caprice or idle curiosity.[528]

[521] People v. Ray, 981 P.2d 928, 935-38 (1999); State v. Hoth, 718 A.2d 28, 34-35 (1998).
[522] State v. Iversen, 768 N.W.2d 534, 536 (2009).
[523] *Id*. at 537 (citing Florida v. Bostick, 501 U.S. 429, 433 (1991)).
[524] State v. Burkman, 281 N.W.2d 436, 439 (1979).
[525] State v. Krebs, 504 N.W.2d 580, 584 (1993).
[526] State v. De La Rosa, 657 N.W.2d 683, 686 (2003).
[527] State v. Overbey, 790 N.W.2d 41, 45 (2010).
[528] State v. Anderson, 331 N.W.2d 568, 570 (1983).

An officer does not impermissibly expand the scope of a traffic stop by asking the driver questions, even if the subject of the questioning is unrelated to the original purpose of the stop, as long as the questioning does not unduly extend the duration of the initial valid seizure.[529]

An officer's request to examine a driver's license and vehicle registration or rental papers during a traffic stop and to run a computer check on both … are also within the scope of investigation attendant to the traffic stop.[530]

The Constitutional reasonableness of an investigatory detention is judged under *Terry v. Ohio* and involves a two-part inquiry:

1. Was the stop justified at its inception?
2. Were the officer's actions during the stop 'reasonably related' in scope to the circumstances which justified the interference in the first place?[531]

An investigative detention must be temporary and last no longer than is necessary to effectuate the purpose of the stop. Similarly, the investigative methods employed should be the least intrusive means reasonably available to verify or dispel the officer's suspicion in a short period of time.[532]

Once the reason for detaining an individual has evaporated, the officer must allow the driver to proceed without further constraint.[533]

Probable Cause to Arrest

The Constitution allows for a search and seizure to proceed without a warrant, but not without probable cause.[534]

[529] State v. Akuba, 686 N.W.2d 406, 415 (2004).
[530] State v. Bonacker, 825 N.W.2d 916, 923 (2013).
[531] State v. Littlebrave, 776 N.W.2d 85, 89 (2009); United States v. Bloomfield, 40 F.3d 910, 915 (8th Cir. 1994).
[532] State v. Ballard, 617 N.W.2d 837, 841 (2000).
[533] State v. Hayen, 751 N.W.2d 306, 309 (2008).
[534] State v. Zachodni, 466 N.W.2d 624, 627 (1991).

TENNESSEE

Summary:

Tennessee has no delineated tiers of police-citizen encounters:

1. Brief Encounters[535]
2. Investigatory Stops[536]
3. Arrest[537]

There is no mention of *De Bour* in case law or opinion.

Brief Encounters

Tennessee recognizes that not all police-citizen encounters rises to the level of a seizure implicating Fourth Amendment protections.[538]

An officer may approach individuals on the street and ask questions without any suspicion.[539]

Tennessee follows the United State Supreme Court's approach in *Florida v. Royer:*

> law enforcement officers do not violate the Fourth Amendment by merely approaching an Individual on the street or in another public place, by asking him if he is willing to answer some questions, by putting questions to him if the person is willing to listen, or by offering evidence in a criminal prosecution his voluntary answers. Nor would the fact that the officer identifies himself as a police officer, without more, convert the encounter into a seizure requiring some level of objective justification. The person approached, however, need not answer any question to put him; indeed, he may decline to listen to the questions and may go his way. He may not be detained even momentarily without reasonable, objective grounds for doing so; and his refusal to listen or answer does not, without more, furnish those grounds.[540]

Investigatory Stops: Reasonable Suspicion

[535] United States v. Mendenhall, 446 U.S. 544, 553 (1980).
[536] Terry v. Ohio, 392 U.S. 1, 25-26 (1968).
[537] State v. Echols, 382 S.W.3d 266, 277 (2012).
[538] State v. Daniel, 12 S.W.3d 420, 425 (2000).
[539] *Id.*
[540] Florida v. Royer, 460 U.S. 491, 497 (1983).

An investigatory stop occurs when an officer has "reasonable suspicion, supported by specific and articulable facts, to believe that a criminal offense has been or is about to be committed."[541]

An officer is justified during a *Terry* stop to ask a few questions and if the situation calls for it frisk the individual for weapons.[542]

Tennessee agrees that reasonable suspicion is more than an "officer's inchoate and unparticularized suspicion or 'hunch,'" but, acknowledges that reasonable suspicion is a lesser standard than probable cause.[543]

Courts must look at the totality of the circumstances to determine if an officer had reasonable suspicion to conduct a *Terry* stop.[544]

The court may consider: an officer's observations, information from other law enforcement officers, citizens, known patters of criminal offenders, or personal experience.[545]

Arrest

Tennessee recognizes that the first and second encounter rises to the level of a "seizure" for constitutional purposes.[546]

A full-scale arrest supported by probable cause is an exception to the warrant requirement.[547]

A seizure occurs when under the totality of the circumstances a reasonable person would have believed he or she was not free to leave.[548]

[541] State v. Simpson, 968 S.W.2d 776, 780 (1998).
[542] Aslinger v. State, 2 N.E.3d 84, 89 (2014).
[543] State v. Pulley, 863 S.W.2d 29, 32 (1993).
[544] State v. Binette, 33 S.W.3d 215, 218 (2000).
[545] State v. Watkins, 827 S.W.2d 293, 294 (1992).
[546] State v. Day, 263 S.W.3d 891, 901 (2008).
[547] State v. Hanning, 296 S.W.3d 44, 48 (2009).

The court considers all of the circumstances surrounding the seizure to determine whether "police conduct would have communicated to a reasonable person that the person was not free to decline the officer's request or otherwise terminate the encounter."[549]

TEXAS

Summary:

Texas has three tiers of police citizen encounters: [550]

1. Consensual encounters

2. Investigative detentions

3. Arrests

There is only one citation or mention to *De Bour* in decisions or opinions: *Molina v. State*, 754 S.W.2d 468, 471 (1988).[551]

Consensual Encounters

Police officers are as free as any other citizen to approach citizens to ask for information or cooperation.[552]

Law enforcement officers do not violate the Fourth Amendment by merely approaching an individual on the street or in another public place, by asking him if he is willing to answer

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[548] State v. Daniel, 12 S.W.3d 420, 425 (2000).
[549] *Id*.
[550] State v. Woodard, 341 S.W.3d at 410–11 (citing Florida v. Bostick, 501 U.S. 429, 434 (1991)); Terry v. Ohio, 392 U.S. 1, 30–31 (1968); Gerstein v. Pugh, 420 U.S. 103, 111–12 (1975)).
[551] In the following quote, *De Bour* is cited for the second proposition. "But many alleged neutral contacts do escalate into *Terry* stops on the basis of the detained person's subsequent conduct. Inconsistent answers, excessive nervousness, a drugged demeanor, and furtive gestures have all been declared sufficiently suspicious to justify transforming a neutral contact into a forcible investigative detention."
[552] State v. Garcia–Cantu, 253 S.W.3d 236, 241 (2008)).

some questions, by putting questions to him if the person is willing to listen, or by offering in evidence in a criminal prosecution his voluntary answers to such questions.[553]

Courts must take into account the totality of the circumstances of the interaction to decide whether a reasonable person would have felt free to ignore the police officer's request or terminate the consensual encounter.[554]

If an officer through force or a show of authority succeeds in restraining a citizen in his liberty, the encounter is no longer consensual; it is a Fourth Amendment detention or arrest, subject to Fourth Amendment scrutiny.[555]

A person's refusal to cooperate with a police request during a consensual encounter cannot, by itself, provide the basis for a detention.[556]

But police may not escalate a consensual encounter into a protective frisk without reasonable suspicion that the person (1) has committed, is committing, or is about to commit a criminal offense *and* (2) is armed and dangerous.[557]

Investigative Detentions

Reasonable suspicion of criminal activity permits a temporary seizure for questioning that is limited to the reason for the seizure.[558]

The Fourth Amendment to the United States Constitution permits a warrantless detention of a person, short of a full-blown custodial arrest, if the detention is justified by reasonable suspicion.[559]

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[553] Wade v. State, 422 S.W.3d 661, 676 (2013).
[554] State v. Castleberry, 332 S.W.3d 460, 467 (2011).
[555] Castleberry, 332 S.W.3d at 467; Cal. v. Hodari D., 499 U.S. 621, 627–28 (1991).
[556] Wade v. State, 422 S.W.3d 661, 676 (2013) (citing Florida v. Bostick, 501 U.S. 429, 437 (1991)); Florida v. Royer, 460 U.S. 491, 498 (1983)).
[557] Adams v. Williams, 407 U.S. 143, 146 (1972); State v. Carmouche, 10 S.W.3d 323, 329 (2000).
[558] United States v. Brignoni–Ponce, 422 U.S. 873, 881–82 (1975).
[559] State v. Kerwick, 393 S.W.3d 270, 273 (2013) (citing Terry v. Ohio, 392 U.S. 1, 28 (1968); *see also* Derichsweiler v. State, 348 S.W.3d 906, 914 (2011).

A police officer has reasonable suspicion for a detention if he has specific, articulable facts that, when combined with rational inferences from those facts, would lead him to reasonably conclude that the person detained is, has been, or soon will be engaged in criminal activity.[560]

This is an objective standard that disregards the actual subjective intent of the arresting officer and looks, instead, to whether there was an objectively justifiable basis for the detention.[561]

If an officer is justified in believing that a person whose suspicious behavior he is investigating is armed, he may frisk that person to determine if the suspect is, in fact, carrying a weapon and, if so, to neutralize the threat of physical harm.[562]

The purpose of a *Terry* frisk is not to discover evidence of crime, but to allow the officer to pursue his investigation without fear of violence.[563]

Reasonable suspicion may exist even if the conduct of the person detained is "as consistent with innocent activity as with criminal activity."[564]

The following factors may be considered when determining whether a seizure was a detention or an arrest:

(1) the amount of force displayed;

(2) the duration of a detention;

(3) the efficiency of the investigative process and whether it is conducted at the original location or the person is transported to another location;

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[560] *Derichsweiler*, 348 S.W.3d at 914 (citing United States v. Sokolow, 490 U.S. 1, 7 (1989)).
[561] *Id.*
[562] *Terry*, 392 U.S. at 24.
[563] Carmouche v. State, 10 S.W.3d 323, 329 (2000); *see Terry*, 392 U.S. at 29.
[564] York v. State, 342 S.W.3d 528, 536 (2011) (quoting Curtis v. State, 238 S.W.3d 376, 378–79 (2007)).

(4) the officer's expressed intent—that is, whether he told the detained person that he was under arrest or was being detained only for a temporary investigation; and

(5) any other relevant factors.[565]

During an investigatory detention, officers are permitted to use reasonably necessary force to maintain the status quo, effectuate an investigation, or protect the safety of individuals at the scene.[566]

For example, it is sometimes reasonable for officers to handcuff suspects during an investigatory detention in order to maintain the status quo or to ensure officer safety.[567]

Arrests

Under Texas law, a police officer must have both probable cause *with respect to the person being arrested*, plus statutory authority to make that arrest.[568]

To establish probable cause to arrest, the evidence must show that "at that moment of the arrest the facts and circumstances within the officer's knowledge and of which he had reasonably trustworthy information were sufficient to warrant a prudent man in believing that the arrested person had committed or was committing an offense."[569]

UTAH

Summary:

There is one case that cites *De Bour*: *State v. Whittenback*, 621 P.2d 103, 105 (1980).[570]

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[565] State v. Sheppard, 271 S.W.3d 281, 291 (2008); State v. Whittington, 401 S.W.3d 263, 272 (2013).
[566] *Whittington*, 401 S.W.3d at 272.
[567] *Whittington*, 401 S.W.3d at 272; *see also Sheppard*, 271 S.W.3d, at 289 (stating that the use of handcuffs does not automatically convert a detention into an arrest).
[568] State v. Steelman, 93 S.W.3d 102, 107 (2002); *see also* TEX.CODE CRIM. PROC. Arts. 14.01–14.04 (listing situations under which a police officer may arrest a person without an arrest warrant).
[569] *Steelman*, 93 S.W.3d at 107 (quoting Beverly v. State, 792 S.W.2d 103, 105 (1990)).
[570] "From [the officer's] previous encounter with them, he knew that they were from out-of-town and that, on the prior occasion, they had been in possession of contraband and a bag full of coins. All of this gave the officer an objective credible reason to enter the laundromat, a public place where he had a right to be, and to ask defendants

Utah has three tiers of police citizen encounters:[571]

1. Approach

2. Terry stop

3. Arrests

Approach

A level one civilian encounter with a law enforcement official is a consensual encounter wherein a person voluntarily responds to non-coercive questioning by an officer. Since the encounter is consensual, and the person is free to leave at any point, there is no seizure within the meaning of the Fourth Amendment.[572]

While police officers can approach individuals and ask them potentially incriminating questions, if the manner of the questioning, the content of the questions, and the context in which the questions are being asked, if under all of the circumstances a reasonable person would not feel free to leave, can convert the "mere questioning" into a level two seizure.[573]

An officer's investigative questioning that included officer misrepresentations did not constitute coercion or show of authority sufficient to remove it from a level one interaction.[574]

Terry Stop

A level two stop or seizure within the meaning of the Fourth Amendment occurs when an officer by means of physical force or show of authority has in some way restrained the liberty of a person.[575]

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what they were doing and for identification. There was no improper seizure or detention in the questioning." *See* People v. LaPene, 40 N.Y.2d 210 (1976).

[571] State v. Jackson, 805 P.2d 765, 766–67 (1990).

[572] State v. Hansen, 63 P.3d 650, 661 (2002).

[573] State v. Alvarez, 147 P.3d 425, 431 (2006).

[574] State v. Merworth, 153 P.3d 775, 779 (2006).

[575] State v. Bean, 869 P.2d 984, 986 (1994).

"In determining whether reasonable suspicion exists, the totality of the circumstances—the whole picture—must be taken into account. Based on that whole picture, the detaining officers must have a particularized and objective basis for suspecting the particular person … of criminal activity."[576]

A seizure occurs only if, in view of all the circumstances surrounding the incident, a reasonable person would have believed that they were not free to leave.[577]

The detention must be temporary and can last no longer than is necessary to effectuate the purpose of the stop.[578]

Arrests

An arrest is justified if probable cause exists to believe a person is committing or has committed a crime.[579]

VERMONT

Summary:

Vermont has no delineated tiers of police citizen encounters.

There is no mention of *De Bour* in case law or opinion.

Fourth Amendment Not Triggered

Mere questioning by the police does not amount to a seizure.[580]

A seizure does not occur when an officer merely approaches an individual and asks certain questions, and therefore no minimal level of suspicion of wrongdoing is necessary.[581]

[576] United States v. Lambert, 46 F.3d 1064, 1069 (10th Cir. 1995).
[577] State v. Struhs, 940 P.2d 1225, 1227 (1997).
[578] State v. Deitman, 739 P.2d 616, 617 (1987).
[579] United States v. Espinosa, 782 F.2d 888, 891 (1986).
[580] State v. Sprague, 824 A.2d 539, 548 (2003).
[581] State v. Pitts, 978 A.2d 14, 19 (2009).

Determination that police activities amount to prohibited search or seizure under State Constitution depends upon whether defendant conveyed expectation of privacy in such way that reasonable person would conclude that he sought to exclude public.[582]

A seizure does not require suspicion of criminal conduct where police officers are acting under the community caretaking doctrine in their essential role as public servants to assist those in distress and to maintain and foster public safety; the officers only need to point to specific and articulable facts leading them to reasonably believe the defendant is in need of assistance.[583]

Investigatory Stops – Reasonable Suspicion

Under the Federal and State Constitutions' prohibition against unreasonable searches and seizures, police officers may conduct a warrantless investigatory stop when specific and articulable facts, taken together with rational inferences from those facts, warrant a reasonable belief that a suspect is engaging in criminal activity.[584]

When a police officer has reasonable and articulable grounds to suspect that an individual is engaged in criminal activity, the officer may briefly detain the individual to investigate the circumstances that gave rise to the suspicion, while ensuring that the detention is reasonably related in scope to the circumstances that justified it.[585]

A police officer must have a reasonable basis to believe that the officer's safety, or the safety of others, is at risk or that a crime has been committed before ordering a driver out of a stopped vehicle; the facts sufficient to justify an exit order need be no more than an objective

[582] State v. Blow, 602 A.2d 552, 555 (1991).
[583] State v. Campbell, 789 A.2d 926, 928 (2001).
[584] State v. Edmonds, 58 A.3d 961, 964 (2012).
[585] State v. Pitts, 978 A.2d 14, 19 (2009).

circumstance that would cause a reasonable officer to believe it was necessary to protect the officer's, or another's, safety or to investigate a suspected crime.[586]

Level of suspicion required to justify investigatory stop need not rise to level required to prove guilt by preponderance of evidence, but it must be more than inchoate and un-particularized suspicion or hunch.[587]

Investigatory stops are permitted where specific and articulable facts, together with the rational inferences taken therefrom, reasonably warrant the intrusion; requisite level of suspicion is considerably less than proof of wrongdoing by preponderance of the evidence.[588]

An investigatory stop is warranted when a police officer has a reasonable and articulable suspicion of illegal activity; this means there must be more than an un-particularized suspicion or hunch of criminal activity but considerably less than proof of wrongdoing by a preponderance of the evidence.[589]

A police officer may expand the scope of an investigatory stop and conduct a warrantless search if the officer has probable cause to arrest.[590]

The point at which mere questioning or field inquiry becomes a detention requiring some level of objective justification is not susceptible of precise definition.[591]

Probable Cause to Arrest

A full-scale arrest or the functional equivalent, i.e., where the level of restraint has become too intrusive to be classified as an investigative detention, requires the highest level of justification, probable cause, to believe that a crime has been committed.[592]

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[586] State v. Sprague, 824 A.2d 539, 546 (2003).
[587] State v. Warner, 773 A.2d 273, 275 (2001).
[588] State v. Siergiey, 582 A.2d 119, 121 (1990).
[589] State v. Rutter, 15 A.3d 132, 135 (2011).
[590] State v. Chicoine, 928 A.2d 484, 487 (2007).
[591] State v. Pitts, 978 A.2d 14, 19 (2009).
[592] *Id*.

Probable cause for warrantless search exists if there is substantial basis for police's belief that there was fair probability of finding evidence of a crime in particular place.[593]

Substantial basis for police belief that evidence of crime will be found in particular place is evaluated according to totality of circumstances.[594]

Probable cause for a warrantless arrest requires the same level of evidence needed for the issuance of a warrant.[595]

Whether arrest is constitutionally permissible turns on whether, at time of arrest, police officers had probable cause.[596]

VIRGINIA

Summary:

Virginia has three levels of police citizen encounters:[597]

1. Consensual encounters
2. Investigatory or *Terry* stops
3. Arrests

There is one mention to *De Bour* in *Lawson v. Commonwealth*, 217 VA. 354, 356 (1976).[598]

Consensual Encounters

A police request made in a public place for a person to produce some identification, by itself, generally does not constitute a Fourth Amendment seizure.[599]

[593] State v. Langlois, 667 A.2d 46, 47 (1995).
[594] *Id*.
[595] *Chicoine*, 928 A.2d at 487.
[596] State v. Meunier, 409 A.2d 583, 584 (1979).
[597] *See generally* McLellan v. Commonwealth, 554 S.E.2d 699 (2001).
[598] "The officers here had an 'articulable reason' for making 'an investigative confrontation' with the defendant. *See* People v. De Bour, 352 N.E.2d 562 (1976)."
[599] *McLellan*, 554 S.E.2d at 703.

Courts, in determining whether a particular search was reasonable, must consider the scope of the particular intrusion, the manner in which it is conducted, the justification for initiating it, and the place in which it is conducted.[600]

With regard to seizures, within the scope of the Fourth Amendment, reasonableness depends largely on the extent of the individual's loss of freedom compared to the police officer's level of suspicion of criminality against the individual.[601]

Where the police inform an individual that they are conducting a general investigation in response to a report, the encounter, without more, is not a "seizure."[602]

Investigatory or Terry Stops

To justify the brief seizure of a person by such an investigatory stop, the police officer must have a reasonable suspicion, based on objective facts, that the individual is involved in criminal activity.[603]

Whether reasonable suspicion exists to support investigatory stop depends on the "totality of the circumstances," which includes the content of the information possessed by police and its degree of reliability.[604]

In deciding whether to make an investigatory stop, an officer is entitled to rely upon the totality of the circumstances; the police officer is also entitled to view the circumstances confronting him in light of his training and experience, and he may consider any suspicious conduct of the suspected person.[605]

Full Arrest

[600] King v. Commonwealth, 644 S.E.2d 391, 394 (2007).
[601] Barkley v. Commonwealth, 576 S.E.2d 234, 238 (2003).
[602] Sheler v. Commonwealth, 566 S.E.2d 203, 207 (2002).
[603] Whitfield v. Commonwealth, 576 S.E.2d 463, 464 (2003).
[604] Sidney v. Commonwealth, 702 S.E.2d 124, 128 (2010).
[605] Alston v. Commonwealth, 581 S.E.2d 245, 250 (2003).

A person is "seized" within the meaning of the Fourth Amendment if, under the circumstances presented, a reasonable person would believe that he was not free to leave the scene of an encounter with the police.[606]

To determine whether an officer had probable cause to arrest an individual, courts examine the events leading up to the arrest, and then decide whether these historical facts, viewed from the standpoint of an objectively reasonable police officer, amount to probable cause.[607]

The probable-cause-to-arrest standard is a fluid concept incapable of precise definition or quantification into percentages because it deals with probabilities and depends on the totality of the circumstance.[608]

At the heart of all the definitions of probable cause is a reasonable ground for belief of guilt particularized with respect to the person to be arrested.[609]

WASHINGTON

Summary:

Washington has no delineated tiers of police citizen encounters.

There is one citation to *De Bour*: *State v. Larson*, 587 P.2d 171, 173 (1978)[610].

Fourth Amendment Not Triggered, No Suspicion

[606] McLellan v. Commonwealth, 554 S.E.2d 699, 702 (2001).
[607] Doscoli v. Commonwealth, 786 S.E.2d 472, 472 (2016).
[608] *Id*.
[609] *Id*.
[610] While the presence of individuals wandering abroad late at night or at an unusual hour should not of itself precipitate a police investigation, it is a circumstance justifying suspicion. Taking it in combination with factors such as the defendant's being seated in a car parked in a no-parking zone near a closed park in an area where numerous burglaries had occurred previously, police suspicion of illegal conduct was justifiable. Under such circumstances, the police may ask for identification from passengers as well as the driver. Simply put, defendant's right of privacy does not include the right to remain in an off-limits area unexplained. *See generally* People v. De Bour, 352 N.E.2d 562 (1976).

As in many other states, street encounters do not require any level of suspicion and are not subject to the Fourth amendment.[611]

These encounters include approaching an individual for information or asking to see identification.[612]

Police may also stop to offer aid; this includes a routine check on health and safety.[613]

This type of encounter's reasonableness depends "on a balancing of citizen's privacy interest in freedom from police intrusion against the police intrusion against the public's interest in having police perform a community caretaking function."[614]

The Court in Washington notes however that his balancing test normally favors the actions of the police.[615]

Investigative Stops – Reasonable Suspicion

An investigative stop under Washington law "consists of, at most, a brief stop, interrogation, and under proper circumstances, a brief check of weapons."[616]

If the stop goes beyond what the Washington court has defined, the encounter becomes a "de facto arrest" and requires probable cause.[617]

Like in *Terry v. Ohio*, Washington requires Officers to point to articulable facts "giving rise to a reasonable suspicion the person stopped is, or is about to be engaged in criminal activity."[618]

[611] State v. Belanger, 677 P.2d 781, 783 (1984).
[612] *Id*.
[613] State v. Kinzy, 5 P.3d 668, 676 (2000).
[614] *Kinzy*, 5 P.3d at 681.
[615] *Id*.
[616] United States v. Kinsey, 952 F. Supp. 2d 970, 974 (E.D. Wash. 2013).
[617] *Id*.
[618] States v. Mecham, 331 P.3d 80, 85 (2014).

Washington extends *Terry* requiring the following for the stop to be legitimate: the state needs to establish that initial stop of the defendant is legitimate, there is a reasonable safety concern to frisk the defendant for weapons, and the scope of the frisk is limited.[619]

Probable Cause to Arrest

In order for a street encounter to rise to the level for an encounter to rise to the level of a seizure when they are "restrained by means of physical force or a show of authority."[620]

Washington courts use the test developed in *United States v. Mendenhall* that considers under the totality of the circumstances a "reasonable person would have felt free to leave or otherwise decline the officer's requests and terminate the encounter."[621]

WEST VIRGINIA

Summary:

West Virginia has no delineated tiers of police citizen encounters.

There is one mention to *De Bour: State v. Boswell*, 294 S.E.2d 287, 293 (1982).[622]

Fourth Amendment Not Triggered – No Suspicion

Intensity of initial police inquiry will determine whether initial threshold of "seizure" has been crossed, since intensity of inquiry will govern when reasonable person would believe that he was not free to leave initial police encounter.[623]

Informational request by police officer to defendant for some identification, following stop of vehicle in which defendant was passenger, did not constitute "seizure" of defendant, but,

[619] State v. Garvin, 207 P.3d 1266, 1270 (2009).
[620] State v. Thorn, 917 P.2d 108, 111 (1996) (citing United States v. Mendenhall, 446 U.S. 544 (1980)).
[621] State v. Kinzy, 5 P.3d 674 (2000).
[622] The court quoted a case from Alabama (Atchley v. State, 393 So. 2d 1034, 1043–44 (1981)) that cited, among others, People v. De Bour, 352 N.E.2d 562 (1976): "Our review of the case law of other states on this point reveals that there are a number of decisions which have found that the actions of police officers in merely addressing questions and perhaps requesting identification of persons on the streets do not amount to 'stops' or seizures within the ambit of the Fourth Amendment."
[623] State v. Flint, 301 S.E.2d 765, 770 (1983).

instead, represented permissible minimal level of police intrusion, in light of suspicious nature of circumstances which gave rise to stop of vehicle in first instance.[624]

Investigative detentions - Reasonable Suspicion

Stop and frisk exception to warrant requirement gives police officers authority to conduct limited pat down for weapons.[625]

Police officer making lawful investigatory stop may, in order to protect himself and others, conduct search for concealed weapon, regardless of whether officer has probable cause to arrest individual for crime, where officer has reason to believe that individual is armed and dangerous; inquiry is whether reasonably prudent man would be warranted in belief that his safety or that of others was endangered.[626]

If a person was seized, and thus was subject of a stop, courts, in determining whether Fourth Amendment rights were violated, move on to consider whether the seizure was justified by reasonable suspicion; this level of suspicion must be a particularized and objective basis for suspecting the particular person stopped of criminal activity.[627]

To determine whether police seized a suspect, as would constitute a stop, a court considers whether, in view of all the circumstances surrounding the incident, a reasonable person would have believed that he was not free to leave.[628]

When evaluating whether particular facts establish reasonable suspicion for investigatory stop, one must examine totality of circumstances, which includes both the quantity and quality of information known by police.[629]

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[624] *Id*.
[625] State v. Rahman, 483 S.E.2d 273, 279 (1996).
[626] State v. Choat, 363 S.E.2d 493, 498 (1987).
[627] United States v. Foster, 824 F.3d 84, 88-89 (4th Cir. 2016).
[628] *Id.* at 88.
[629] State v. Legg, 536 S.E.2d 110, 116 (2000).

Probable Cause to Arrest

Both Federal and State Constitutions protect citizens from unreasonable arrests and provide for issuance of warrant upon showing of probable cause.[630]

WISCONSIN

Summary:

Wisconsin has no delineated tiers of police citizen interaction.

There is no mention of *De Bour* in case law or opinion.

Fourth Amendment Not Triggered

Subject to a few well-delineated exceptions, *warrantless searches* are deemed per se unreasonable under the Fourth Amendment, and Article 1, Section11 of the Wisconsin Constitution.[631]

One of those exceptions is when a police officer is serving as a community caretaker to protect persons or property.[632]

A police officer serving as a community caretaker to protect persons and property may be constitutionally permitted to perform *seizures without probable cause*.[633]

Whether a given community caretaker function will pass muster under the Fourth Amendment so as to permit a warrantless home entry depends on whether the community caretaker function was reasonably exercised under the totality of the circumstances of the incident under review.[634]

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[630] State v. Cheek, 483 S.E.2d 21, 26 (1996).
[631] State v. Faust, 682 N.W.2d 371, 376 (2004).
[632] State v. Pinkard, 785 N.W.2d 592, 597–99 (2010).
[633] *Id.*
[634] *Id.*

Evidence discovered without a warrant is admissible under the Community Caretaker doctrine if the intrusion is reasonable.[635]

Wisconsin has adopted a three-element test for evaluating potential community caretaker functions:[636]

1) whether a seizure within the meaning of the Fourth Amendment has occurred;
2) whether the police conduct was a bona fide community caretaker function;
3) whether the public interest outweighs the intrusion on the privacy of the individual.

Investigative Stops - Reasonable Suspicion

Pursuant to *Terry v. Ohio*, a police officer may, under certain circumstances, temporarily detain a person for purposes of investigating possible criminal behavior, even though there is not probable cause to make an arrest.[637]

When a stop is justified through reasonable suspicion, the next question is whether the length of the stop is reasonable; unreasonably prolonged detentions may violate the Fourth Amendment absent probable cause.[638]

In assessing a detention's validity, courts must consider the totality of the circumstances-the whole picture, because the concept of reasonable suspicion is not readily, or even usefully, reduced to a neat set of legal rules.[639]

Whether a person has been arrested and therefore triggered Fourth Amendment depends on whether a reasonable person in the their position would have considered themselves to be 'in custody' given the degree of restraint under the circumstances.[640]

[635] State v. Mendoza-Ruiz, 240 P.3d 1235, 1237 (2010).
[636] State v. Kramer, 759 N.W.2d 598, 605 (2009).
[637] State v. Chambers, 198 N.W.2d 377, 378 (1972).
[638] State v. Blatterman, 864 N.W.2d 26, 35 (2015).
[639] State v. Wilkens, 465 N.W.2d 206, 210 (1990).
[640] State v. Swanson, 475 N.W.2d 148, 152 (1991).

While the use of handcuffs is certainly restrictive, it does not necessarily render a temporary detention unreasonable or transform a detention into an arrest.[641]

Even if police officers approach a person at gunpoint, this does not necessarily transform the investigatory stop (Terry) into an arrest.[642]

The police may, where reasonable grounds exist, move a suspect in the general vicinity of the stop without converting what would otherwise be a temporary seizure into an arrest.[643]

Probable Cause to Arrest

Warrantless arrests are unlawful unless they are supported by probable cause.[644]

WYOMING

Summary:

Wyoming has three defined levels of police-citizen encounters:[645]

(1) communication between police and citizens involving no coercion or detention and therefore without compass of Fourth Amendment

(2) brief "seizures" they must be supported by reasonable suspicion

(3) full-scale arrest that must be supported by probable cause

There is no mention of *De Bour* in case law or opinion.

Communication involving no coercion or detention

Police officers do not need reasonable suspicion or probable cause in order to make contact with citizen.[646]

[641] State v. Pickens, 779 N.W.2d 1, 8 (2009); State v. Vorburger, 648 N.W.2d 829, 843 (2002).
[642] Jones v. State, 233 N.W.2d 441, 446 (1975).
[643] State v. Quartana, 570 N.W.2d 618, 621 (1997).
[644] State v. Lange, 766 N.W.2d 551, 555 (2009).
[645] *See generally* Collins v. State, 854 P.2d 688 (1993).
[646] *Id.* at 691.

Encounter between defendant and police officer remained consensual even after officer obtained defendant's identification and then radioed for a warrants check where the officer did not impose any restriction on defendant's freedom to leave when the warrants check was instituted.[647]

Brief Seizures

An investigatory stop represents a seizure which invokes Fourth Amendment safeguards but is less intrusive than an arrest.[648]

An investigatory stop represents a seizure which requires only the presence of specific and articulable facts and rational inferences which give rise to a reasonable suspicion that a person has committed or may be committing a crime.[649]

In justifying the particular intrusion during an investigatory stop the 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.[650]

Full-Scale Arrest

Probable cause for arrest is the cause which logically leads to a conclusion that the person to be arrested is the one who has committed or was engaged in the commission of the crime.[651]

FIRST CIRCUIT

Summary:

The First Circuit recognizes interaction between law enforcement officials and citizens generally falls within three tiers of Fourth Amendment analysis, depending on the level of police intrusion into a person's privacy:[652]

[647] Wilson v. State, 874 P.2d 215, 222 (1994).
[648] Meek v. State, 37 P.3d 1279, 1282 (2002).
[649] Barch v. State, 92 P.3d 828, 831 (2004).
[650] *Id.*
[651] Rodarte v. City of Riverton, 552 P.2d 1245, 1255 (1976).

1. Fourth Amendment not triggered, no suspicion

2. Investigative stops

3. Arrests

There is no mention to *De Bour* in case law or opinion.

Fourth Amendment Not Triggered, No Suspicion

The Supreme Court has repeatedly emphasized that not all personal intercourse between the police and citizens rises to the level of a stop or seizure.[653]

Police may approach citizens in public spaces and ask them questions without triggering the protections of the Fourth Amendment.[654]

Such police engagements need not find a basis in any articulable suspicion.[655]

Police conduct falls short of triggering Fourth Amendment protections when, from the totality of the circumstances, we determine that the subject of any police interaction would have felt free to terminate the conversation and proceed along his way.[656]

Investigative Stops

An investigative stop, also known as a *Terry* stop, occurs when a police officer, acting on reasonable and articulable suspicion of criminal activity, briefly detains an individual to confirm or dispel his suspicion.[657]

Arrests

An arrest occurs when an officer, acting on probable cause that an individual has committed a crime, detains that individual as a suspect. Probable cause exists when police

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[652] *See generally* United States v. Young, 105 F.3d 1 (1st Cir. 1997).
[653] Florida v. Bostick, 501 U.S. 429, 434 (1991).
[654] *See id*.; *see also* United States v. Manchester, 711 F.2d 458, 460 (1st Cir. 1983).
[655] *Bostick*, 501 U.S. at 435.
[656] *Id*. at 439; United States v. Sealey, 30 F.3d 7, 9 (1st Cir. 1994).
[657] *See generally* Terry v. Ohio, 392 U.S. 1 (1968); United States v. Schiavo, 29 F.3d 6, 8 (1st Cir. 1994).

officers, relying on reasonably trustworthy facts and circumstances, have information upon which a reasonably prudent person would believe the suspect had committed or was committing a crime.[658]

SECOND CIRCUIT

Summary:

There are numerous citations to *De Bour*. Two cases cite from the Court of Appeals: *Johnson v. Metz*, 609 F.2d 1052, 1056, fn. 4 (2d Cir. 1979)[659] and *United States v. Hooper*, 935 F.2d 484, 490-91 (2d Cir. 1991).[660] Three cases offer cautionary mentions: *Ligon v. City of N.Y.*, 925 F. Supp. 2d 478, 538-39 (S.D.N.Y. 2013)[661]; *Johnson v. City of Mt. Vernon*, 10 CV 7006 (VB), 2012 U.S. Dist. LEXIS 144153, at *10 (2012)[662]; *Brown v. Brown*, 2006 U.S. Dist. LEXIS 85306, n.36 (2006).[663]

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[658] United States v. Maguire, 918 F.2d 254, 258 (1st Cir.1990); *see also* Kavanagh v. United States, 501 U.S. 1234 (1991).

[659] In a footnote to this section that follows, the Court cited to *De Bour* as an example.
"Nor has there been any definitive determination of whether state habeas corpus survives as a post-conviction remedy. Despite this uncertainty, we have taken the position, though not without a difference of opinion, that whether New York entertains collateral relief at this point is a matter of New York law to be decided by the New York courts. It is difficult for this panel to believe, however, that no post-conviction remedy whatever will be available by way of state collateral relief when a serious federal constitutional issue is involved."
Fn.5: The Supreme Court in County Court of Ulster v. Allen, 442 U.S. 140, 99 S. Ct. 2213, 60 L. Ed. 2d 777 (1979), apparently considered that the issue of fair trial might still be raised, citing, e.g., La Rocca v. Lane, 37 N.Y.2d 575, 584, 376 N.Y.S.2d 93, 338 N.E.2d 606 (1975), and People v. De Bour, 352 N.E.2d 562 (1976).

[660] "In short, 'police officers enjoy 'the liberty (… possessed by every citizen) to address questions to other persons." United States v. Mendenhall, 446 U.S. 544, 553 (1980) (quoting Terry v. Ohio, 392 U.S. 1, 34 (1968) ("there is nothing in the Constitution which prevent a policeman from addressing questions to anyone on the streets"); People v. De Bour, 352 N.E.2d 562 (1976) ("the practical necessities of law enforcement and the obvious fact that any person in our society may approach any other person and attempt to strike up a conversation, make it clear that the police have the authority to approach civilians").

[661] In response to criticisms directed at the NYPD's training materials, defendants have argued that the materials reflect New York state law, and in particular *De Bour* and its progeny. Defendants assert that "New York Law applies" in the instant case. But practices that violate the Fourth Amendment cannot be saved by proving that they comply with state law. To the extent that *De Bour* suggests a police officer, without reasonable suspicion, may lawfully stop and question an individual in such a way that a reasonable person would not feel free to terminate the encounter, that suggestion would be incorrect.

[662] This case distinguishes on the facts: Plaintiff argues that even if Officer Cooper had a reasonable suspicion to stop plaintiff, he was unjustified in searching plaintiff because he was only permitted to stop and seek information from plaintiff. In *De Bour*, the Court of Appeals held "the common-law right to inquire, is activated by a founded suspicion that criminal activity is afoot and permits a somewhat greater intrusion in that a policeman is entitled to interfere with a citizen to the extent necessary to gain explanatory information, but short of a forcible

The Second Circuit has three delineated levels of police citizen encounters:[664]

1. Consensual encounters

2. Investigative detentions

3. Arrests

Consensual Encounters

Consensual encounters require no justification so "long as the police do not convey a message that compliance with their requests is required."[665]

Investigative Detentions

Investigative detentions, the second category, require "reasonable suspicion" to believe that criminal activity has occurred or is about to occur.[666]

These detentions, no matter how brief, must be founded upon "a reasonable suspicion supported by articulable facts that criminal activity may be afoot."[667]

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seizure." However, the officers in *De Bour* were not responding to an ongoing knife fight in progress, a crowd of people, an injured victim, and an identifying witness. Based on the undisputed facts properly before this Court, the circumstances of Officer Cooper's search of plaintiff are far afield from those in *De Bour* and the Court finds *De Bour* inapplicable.

[663] In distinguishing the case at bar, the Court stated in a footnote:
The Court has reviewed the cited cases and, consistent with the First Department's holding, also finds Brown's arguments for lack of probable cause unavailing. Each case is easily distinguishable on the facts. *See, e.g.*, People v. Holmes, 81 N.Y.2d 1056, 1058, 619 N.E.2d 396, 601 N.Y.S.2d 459, 461 (1993) (holding that police observation of an "unidentified bulge" in defendant's jacket pocket, in a "known narcotics location," taken together with defendant's flight, justified an information request but not police pursuit); People v. Howard, 50 N.Y.2d 583, 586, 408 N.E.2d 908, 430 N.Y.S.2d 578, 581 (police officer "may not pursue, absent probable cause to believe that the individual has committed, is committing, or is about to commit a crime, . . . even though he ran away"), *cert. denied*, 449 U.S. 1023, 101 S. Ct. 590, 66 L. Ed. 2d 484 (1980); People v. De Bour, 40 N.Y.2d 210, 221, 352 N.E.2d 562, 386 N.Y.S.2d 375, 383–84, (1976) (police inquiry was reasonable where, after midnight in a drug-prone area, defendant conspicuously crossed the street to avoid walking past uniformed officers; asking defendant to open his jacket after noticing a bulge at the waistband which the officer "'took [] to be a gun'" was a reasonably limited subsequent intrusion).

[664] *See generally* United States v. Tehrani, 49 F.3d 54 (2d Cir. 1995); *see also* United States v. Hooper, 935 F.2d 484, 490 (2d Cir. 1991).

[665] United States v. Glover, 957 F.2d 1004, 1008 (2d Cir. 1992) (quoting Florida v. Bostick, 501 U.S. 429, 435 (1991)).

[666] *Id.*

[667] United States v. Sokolow, 490 U.S. 1, 7 (1989) (quoting Terry v. Ohio, 392 U.S. 1, 30 (1968).

The requisite level of suspicion is "considerably less than proof of wrongdoing by a preponderance of the evidence."[668]

Arrests

Arrests, requiring a showing of probable cause, comprise the third type of encounter between citizens and government agents.[669]

THIRD CIRCUIT

Summary:

The Third Circuit has three delineated levels of police citizen encounters:[670]

1. Consensual encounters

2. Brief seizures or investigatory detentions

3. Full-scale arrests.

There is no mention of *De Bour* in case law or opinion.

Consensual Encounters

The first type of encounter does not implicate the Fourth Amendment.[671]

Encounters between citizens and police officers of short duration that do not amount to Fourth Amendment seizures can be characterized as "consensual" because the citizen has the ability to engage in or terminate the encounter.[672]

When an encounter is consensual, no reasonable suspicion is required.[673]

Investigative Detentions

[668] *Glover*, 957 F.2d at 1009 (quoting United States v. Villegas, 928 F.2d 512, 516 (2d Cir. 1991)).
[669] *Id.* at 1008.
[670] United States v. Brown, 765 F.3d 278, 288 (3d Cir. 2014).
[671] *Id*. (citing United States v. Williams, 413 F.3d 347, 352 (3d Cir. 2005) (stating that officers do not violate the Fourth Amendment "merely by approaching individuals on the street or in other public places"); *see also* Florida v. Bostick, 501 U.S. 429, 434 (1991).
[672] United States v. Crandell, 554 F.3d 79, 84 (3d Cir. 2009).
[673] United States v. Kim, 27 F.3d 947, 950 (3d Cir. 1994).

The second category, brief seizures, requires a showing that the officer acted with reasonable suspicion.[674]

Arrests

And the third category, full-scale arrests is proper only when an officer has probable cause.[675]

FOURTH CIRCUIT

Summary:

The Fourth Circuit has three delineated levels of police citizen encounters: [676]

1. Consensual encounters/Community caretaking

2. Investigative detentions

3. Arrests

There is no mention of *De Bour* in case law or opinion.

Consensual Encounters/Community Caretaking

As a general matter, law enforcement officers do not seize individuals "merely by approaching [them] on the street or in other public places and putting questions to them." [677]

The [Community Caretaker] exception applies only to conduct that is "totally divorced from the detection, investigation, or acquisition of evidence relating to the violation of a criminal statute," and not when community-caretaking functions are used as "a subterfuge for criminal investigations."[678]

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[674] *Id*. (citing Illinois v. Wardlow, 528 U.S. 119, 123 (2000) (stating that an officer may "conduct a brief, investigatory stop when the officer has a reasonable, articulable suspicion that criminal activity is afoot") (citing Terry v. Ohio, 392 U.S. 1, 30 (1968)).
[675] Beck v. Ohio, 379 U.S. 89, 91 (1964) ("Whether [an] arrest was constitutionally valid depends ... upon whether, at the moment the arrest was made, the officers had probable cause to make it.").
[676] Santos v. Frederick County Bd. of Com'rs, 725 F.3d 451, 460 (4th Cir. 2013).
[677] United States v. Jones, 678 F.3d 293, 299 (4th Cir. 2012) (citing United States v. Drayton, 536 U.S. 194, 200 (2002)).
[678] United States v. Johnson, 410 F.3d 137, 145 (4th Cir. 2005) (citing Cady v. Dombrowski, 413 U.S. 433, 441 (1973)); South Dakota v. Opperman, 428 U.S. 364, 370 n. 5 (1976)).

But police encounters with citizens during which police question them are, without more, consensual. "[M]ere police questioning does not constitute a seizure" for Fourth Amendment purposes.[679]

Rather, "[o]nly when the officer, by means of physical force or show of authority, has in some way restrained the liberty of a citizen may we conclude that a 'seizure' has occurred."[680]

In the absence of a seizure, a police-citizen encounter is considered consensual and "will not trigger Fourth Amendment scrutiny."[681]

"[So] long as a person remains at liberty to disregard a police officer's request for information, no constitutional interest is implicated."[682]

Because the test is an objective one, its proper application is a question of law.[683]

Investigative Detention – Reasonable Suspicion

An investigative detention is a limited detention, more intrusive than a consensual encounter between a police officer and a citizen but less intrusive than an outright arrest.[684]

Even if an investigatory stop is justified by reasonable suspicion, a subsequent frisk of a suspect for weapons is not necessarily permissible.[685]

Instead, a frisk must be supported by "reasonable suspicion that the [suspect] is armed and dangerous."[686]

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[679] United States v. Sullivan, 138 F.3d 126, 131 (4th Cir. 1998) (citing Florida v. Bostick, 501 U.S. 429, 434 (1991)).
[680] *Id.* (quoting Terry v. Ohio, 392 U.S. 1, 19–20 n. 16 (1968)).
[681] *Id.*
[682] *Id.* at 131–32.
[683] *Id.*; see United States v. McDonald, 61 F.3d 248, 254 (4th Cir. 1995).
[684] United States v. Torres, 65 F.3d 1241, 1245 (4th Cir.1995); United States v. Johnson, 910 F.2d 1506, 1508 (7th Cir.1990)).
[685] United States v. Sakyi, 160 F.3d 164, 169 (4th Cir. 1998) (explaining "that an officer must have justification for a frisk or a 'pat-down' beyond the mere justification for the traffic stop").
[686] United States v. George, 732 F.3d 296, 299 (4th Cir. 2013) (quoting Arizona v. Johnson, 555 U.S. 323, 327 (2009)); *see also* Terry v. Ohio, 392 U.S. 1, 24 (1968).

To justify a stop, the officer "must be able to point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion."[687]

We look to the totality of the circumstances in determining whether the officer had reasonable suspicion of criminal activity.[688]

"[I]ndividual facts and observations cannot be evaluated in isolation from each other." Rather, factors "susceptible to innocent explanation" individually may "suffice to form a particularized and objective basis" when taken together.[689]

Probable Cause to Arrest

The existence of 'probable cause' is to be determined by the application of a practical, not a technical, standard. The meaning of the phrase has been so frequently stated as to require little elaboration here.[690]

Probable cause is something more than mere suspicion and something less than evidence which would justify a conviction. The essence of all definitions of probable cause for arrest is reasonable ground for belief that a crime has been committed and that the person arrested committed it.[691]

FIFTH CIRCUIT

Summary:

The Fifth Circuit has three delineated levels of police citizen encounters:[692]

1. Consensual questioning

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[687] United States v. Slocumb, 804 F.3d 677, 682 (4th Cir. 2015) (citing *Terry*, 392 U.S. at 21)
[688] *Id.* (citing United States v. Arvizu, 534 U.S. 266, 273 (2002)).
[689] United States v. Hernandez–Mendez, 626 F.3d 203, 208 (4th Cir. 2010) (citing *Arvizu*, 534 U.S. at 277).
[690] *See, e.g.*, Kerr v. California, 374 U.S. 23 (1963); *see* Brinegar v. United States, 338 U.S. 160 (1949); *see* Carroll v. United States, 267 U.S. 132 (1925); United States v. Peisner, 311 F.2d 94, 104 (4th Cir. 1962).
[691] Ralph v. Pepersack, 335 F.2d 128, 132 (4th Cir. 1964).
[1] United States v. Massi, 761 F.3d 512, 520 (5th Cir. 2014) (citing United States v. Zukas, 843 F.2d 179, 181 (5th Cir. 1988)).

2. Investigative stop

3. Arrest

There is no mention to *De Bour* in case law or opinion.

Consensual Questioning

This tier involves no coercion or detention and does not implicate the Fourth amendment.[693]

Voluntary interaction between the state and its citizens, as well as police-initiated contact which a reasonable person would not feel compelled to continue, do not implicate fourth amendment protections.[694]

All the circumstances surrounding an encounter should be considered and question whether the officers' conduct would have caused a reasonable person to believe that he was not free to ignore the police presence and go about his business.[695]

There is no litmus test for when a consensual encounter escalates into a seizure; while no one factor is necessarily dispositive, the court will consider the totality of the circumstances for this determination.[696]

However, an initially consensual encounter may ripen into a seizure requiring reasonable suspicion or probable cause if an officer, by means of physical force or show of authority, restrains the liberty of a person.[697]

Investigative Stop – Articulable Suspicion

[693] *Massi*, 761 F.3d at 520; *Zukas*, 843 F.2d at 181.
[694] United States v. Webster, 750 F.2d 307, 320 (5th Cir.1984); United States v. Berry, 670 F.2d 583, 590 (5th Cir. 1982).
[695] United States v. Chavez, 281 F.3d 479, 483 (5th Cir.2002) (citing Florida v. Bostick, 501 U.S. 429, 437(1991)).
[696] Id. at 484–85 (citing Florida v. Royer, 460 U.S. 491, 506 (1983)).
[697] *Chavez*, 281 F.3d at 483 (quoting INS v. Delgado, 466 U.S. 210, 215 (1984)).

An officer may, consistent with the Fourth Amendment, temporarily detain a person for investigative purposes, when the officer has a reasonable, articulable suspicion that a person has committed or is about to commit a crime.[698]

Reasonable suspicion is described as "a particularized and objective basis' for suspecting the person stopped of criminal activity."[699]

To satisfy Fourth Amendment dictates, the stopping officer must be able to "articulate more than an inchoate and unparticularized suspicion or hunch of criminal activity."[700]

"[W]hile 'reasonable suspicion' is a less demanding standard than probable cause and requires a showing considerably less than preponderance of the evidence, the Fourth Amendment requires at least a minimal level of objective justification for making the stop."[701]

In assessing the validity of a stop, the court considers "the totality of the circumstances—the whole picture."[702]

Evidence obtained from an informed and voluntary consent to search is admissible despite an illegal arrest.[703]

Arrest – Probable Cause

Probable cause exists where 'the facts and circumstances within [the arresting officers'] knowledge and of which they had reasonably trustworthy information [are] sufficient in themselves to warrant a man of reasonable caution in the belief that' an offense has been or is being committed."[704]

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[698] *Id.* (citing Terry v. Ohio, 392 U.S. 1, 30 (1968)).
[699] *Id*. (citing Ornelas v. United States, 517 U.S. 690, 696 (1996)).
[700] *Id.* (citing Illinois v. Wardlow, 528 U.S. 119, 123–24 (2000)).
[701] *Id.* (citing *Wardlow*, 528 U.S. at 123–24).
[702] *Id*. (citing United States v. Sokolow, 490 U.S. 1, 7–8 (1989)).
[703] United States v. Merritt, 736 F.2d 223, 228 (5th Cir. 1984); *see, e.g.*, United States v. Troutman, 590 F.2d 604, 606–07 (5th Cir. 1979); United States v. Fike, 449 F.2d 191, 192–93 (5th Cir. 1971); Bretti v. Wainwright, 439 F.2d 1042, 1045–46 (5th Cir. 1971).
[704] *Id.* at 228 (quoting Draper v. United States, 358 U.S. 307, 313 (1959)).

A "seizure" of the person must be supported by probable cause unless it falls within a narrow exception to the probable cause requirement reserved for police activity that does minimal violence to the "sanctity of the person." Reasonable suspicion suffices for seizures within this category.[705]

SIXTH CIRCUIT

Summary:

The Sixth Circuit has four articulated levels of police-citizen encounters.[706]

1. Pre-Contact
2. Consensual Encounter
3. *Terry* Stop – Reasonable Suspicion
4. Probable Cause to Arrest

There is no mention of *De Bour* in case law or opinion.

Pre-Contact, Lowest

This period, prior to the consensual encounter, occurs when officers observe citizens, and decide to "target" someone for further surveillance, and has been termed the Pre-Contact stage.[707]

While there are no Fourth Amendment protections in this stage, the Equal Protection Clause does apply, if they become the target of a police investigation solely on the basis of skin color.[708]

[705] United States v. Webster, 750 F.2d 307, 320 (5th Cir. 1984) (citing Dunaway v. New York, 442 U.S. 200 (1979) (quoting Terry v. Ohio, 392 U.S. 1, 20 (1968)).
[706] United States v. Avery, 137 F.3d 343, 352–53 (6th Cir. 1997).
[707] *Id*; *see, e.g.*, United States v. Travis, 62 F.3d 170 (6th Cir. 1995).
[708] *Avery*, 137 F.3d at 354; *see* United States v. Brignoni-Ponce, 422 U.S. 873 (1975); *see also* United States v. Martinez-Fuerte, 428 U.S. 543 (1976).

Consequently, when police officers compile several reasons before initiating an interview, as long as some of those reasons are legitimate, there is no Equal Protection violation.[709]

Under the Fourth Amendment, there are three types of permissible encounters between police and citizens: consensual encounters in which contact is initiated by a police officer without any articulable reason whatsoever and the citizen is briefly asked some questions, a temporary involuntary detention or *Terry* stop which must be predicated upon reasonable suspicion, and arrests which must be based on probable cause.[710]

Consensual Encounters

A consensual encounter between police and citizen is permissible without any particularized suspicion, because no seizure has occurred for purposes of the Fourth Amendment.[711]

Law enforcement officers may approach an individual and ask general questions without having any reasonable suspicion of criminal activity, so long as the officers refrain from the type of intimidating behavior that would lead a reasonable person to believe that the person was not free to leave.[712]

One officer's use of words "stop" and "come here" did not convert consensual encounter with defendant into a seizure, despite defendant's claim that he felt blocked in by officers, where officers did not display their weapons or touch defendant before conducting pat-down search and there was no evidence that defendant was physically unable to leave.[713]

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[709] United States v. Travis, 62 F.3d 170, 174 (6th Cir. 1995); *see* Mt. Healthy City Sch. Dist. Bd. of Educ. v. Doyle, 429 U.S. 274 (1977).
[710] United States v. Alston, 375 F.3d 408, 411 (6th Cir. 2004).
[711] *Id*. at 411.
[712] United States v. Waldon, 206 F.3d 597, 603 (6th Cir. 2000); *see* United States v. Peters, 194 F.3d 692, 698 (6th Cir. 1999).
[713] United States v. Falls, 533 Fed. Appx. 505, 507 (7th Cir. 2013).

Whether an encounter between a police officer and a citizen is consensual depends on the officer's objective behavior, not on any subjective suspicion of criminal activity.[714]

Terry Stop, Reasonable Suspicion

Once a consensual encounter escalates to the point where the individual is seized, the police officer must have a reasonable suspicion of criminal activity to justify a *Terry* stop or probable cause to justify an arrest, in order for the seizure to comply with the Fourth Amendment.[715]

A two-part analysis is in order to evaluate the constitutionality of an investigative stop.

1. First, a court will consider "whether there was a proper basis for the stop, which is judged by examining whether the law enforcement officials were aware of specific and articulable facts which gave rise to reasonable suspicion."[716]
2. If the stop was proper, the court will then consider "whether the degree of intrusion was reasonably related in scope to the situation at hand, which is judged by examining the reasonableness of the officials' conduct given their suspicions and the surrounding circumstances."[717]

Ambiguous behavior does not give rise to reasonable suspicion because reasonable suspicion looks for the exact opposite of ambiguity.[718]

An individual is seized when an officer, by means of physical force or show of authority, has in some way restrained their liberty; if the officer acts by a show of authority, the individual must actually submit to that authority.[719]

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[714] *Waldon*, 206 F.3d at 603.
[715] United States v. Campbell, 486 F.3d 949, 954 (6th Cir. 2007).
[716] United States v. Beauchamp, 659 F.3d 560, 569 (6th Cir. 2011) (quoting United States v. Davis, 430 F.3d 345, 354 (6th Cir. 2005)).
[717] *Id.* at 571.
[718] United States v. Young, 707 F.3d 598, 603 (6th Cir. 2012).

Ultimate question in determining reasonableness of police officers' conduct is whether totality of circumstances justifies a particular sort of seizure.[720]

Arrest, Probable Cause

Warrantless arrest is constitutionally valid, if at the moment the arrest was made, the officers had probable cause to make it: whether at that moment the facts and circumstances within their knowledge and of which they had reasonably trustworthy information were sufficient to warrant a prudent man in believing that the individual had committed or was committing an offense.[721]

SEVENTH CIRCUIT

Summary:

The Seventh Circuit has three delineated levels of police citizen encounters: [722]

1. Non-Coercive questioning

2. Investigatory stop

3. Arrest

There is no mention of *De Bour* in case law or opinion.

Non-Coercive Questioning

It is well established that a seizure does not occur merely because a police officer approaches an individual and asks him or her questions.[723]

Law enforcement officers do not violate the Fourth Amendment by merely approaching an individual on the street or in another public place, by asking him if he is willing to answer

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[719] *Beauchamp*, 659 F.3d at 566.
[720] Brown v. Chapman, 814 F.3d 447, 459 (6th Cir. 2016).
[721] *Campbell*, 486 F.3d at 955 (quoting Beck v. Ohio, 379 U.S. 89, 91 (1964)).
[722] United States v. Shields, 789 F.3d 733, 743 (7th Cir. 2015) (citing United States v. Johnson, 910 F.2d 1506, 1508 (7th Cir. 1990)).
[723] United States v. Smith, 794 F.3d 681, 684 (7th Cir. 2015) (citing Florida v. Royer, 460 U.S. 491, 497 (1983)).

some questions, by putting questions to him if the person is willing to listen, or by offering in evidence in a criminal prosecution his voluntary answers to such questions.[724]

So long as a reasonable person would feel free to disregard the police and go about his or her business, the encounter is consensual and no reasonable suspicion is required.[725]

Police do not need probable cause to ask questions, because the subject can refuse to answer.[726]

Investigatory Stop – Reasonable Suspicion

A law enforcement officer can execute "an investigatory stop when the officer has reasonable suspicion that a crime may be afoot."[727]

In order to conduct an "investigatory stop"[728] consistent with *Terry* "an officer must be 'aware of specific and articulable facts giving rise to reasonable suspicion'" that there may be criminal activity occurring.[729]

The "crucial" test for determining if there has been a seizure is "whether taking into account all of the circumstances surrounding the encounter, the police conduct would have communicated to a reasonable person that he was not at liberty to ignore the police presence and go about his business."[730]

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[724] *Id*. (citing United States v. Childs, 277 F.3d 947, 950 (7th Cir. 2002)).
[725] *Id*. (citing Florida v. Bostick, 501 U.S. 429, 434 (1991)); Terry v. Ohio, 392 U.S. 1, 19 n. 16 (1968)).
[726] Hanson v. Dane County, 608 F.3d 335, 338 (7th Cir. 2010) (citing United–States v. Childs, 277 F.3d 947, 952 (7th Cir. 2002)).
[727] Gentry v. Sevier, 597 F.3d 838, 845 (7th Cir. 2010) (citing United States v. Hampton, 585 F.3d 1033, 1038 (7th Cir.2009)).
[728] *See* Terry v. Ohio, 392 U.S. 1 (1968).
[729] Jewett v. Anders, 521 F.3d 818, 823–25 (7th Cir. 2008) (quoting in part United States v. Tilmon, 19 F.3d 1221, 1224 (7th Cir. 1994)); *see also* United States v. Arvizu, 534 U.S. 266, 273 (2002) (stating that "the Fourth Amendment is satisfied if the officer's action is supported by reasonable suspicion to believe that criminal activity may be afoot") (internal quotations omitted) (quoting in part *Terry*, 392 U.S. at 30); *see also* Whren v. United States, 517 U.S. 806, 809–10 (1996) (indicating that even a temporary detention can be a seizure); Valance v. Wisel, 110 F.3d 1269, 1276 (7th Cir. 1997) (indicating that a *Terry* stop constitutes a seizure).
[730] United States v. Smith, 794 F.3d 681, 684 (7th Cir. 2015) (quoting *Bostick*, 501 U.S. at 434).

In determining whether a reasonable person would believe that he was free to leave or whether, instead, the encounter amounts to a seizure, we consider such factors as:[731]

(1) whether the encounter occurred in a public place;
(2) whether the suspect consented to speak with the officers;
(3) whether the officers informed the individual that he was not under arrest and was free to leave;
(4) whether the individuals were moved to another area;
(5) whether there was a threatening presence of several officers and a display of weapons or physical force;
(6) whether the officers deprived the defendant of documents she needed to continue on her way;
(7) whether the officers' tone of voice was such that their requests would likely be obeyed; and
(8) whether police indicated to the person that she was suspected of a crime or was the specific target of police investigation.[732]

These factors, however, are neither exhaustive nor exclusive.[733]

While this test is an objective one, it is necessarily imprecise because what constitutes a restraint on liberty prompting a person to conclude that he is not free to 'leave' will vary, not only with the particular police conduct at issue, but also with the setting in which the conduct occurs.[734]

Probable Cause to Arrest

An arrest is lawful under the Fourth Amendment so long as it is made based on probable cause.[735]

Probable cause "means facts and circumstances within the officer's knowledge that are sufficient to warrant a prudent person, or one of reasonable caution, in believing, in the

[731] United States v. Shields, 789 F.3d 733, 743 (7th Cir. 2015) (citing United States v. Johnson, 680 F.3d 966, 975 n. 4 (7th Cir. 2012) (quoting United States v. Barker, 467 F.3d 625, 629 (7th Cir. 2006)).
[732] United States v. McCarthur, 6 F.3d 1270, 1276 (7th Cir.1993).
[733] United States v. Mendenhall, 446 U.S. 544, 554 (1980) (indicating that such factors are merely "[e]xamples").
[734] Michigan v. Chesternut, 486 U.S. 567, 573–74 (1988).
[735] United States v. Hill, 818 F.3d 289, 294 (7th Cir. 2016) (citing Rodriguez v. United States, 135 S.Ct. 1609, 1621 (2015)).

circumstances shown, that the suspect has committed, is committing, or is about to commit an offense."[736]

Whether probable cause exists is a "commonsense, practical question" made considering the totality of the circumstances.[737]

When a court reviews probable cause determinations, the evidence must be weighed "as understood by those versed in the field of law enforcement."[738]

EIGHTH CIRCUIT

Summary:

The Eighth Circuit has three delineated levels of police citizen encounters: [739]

1. Consensual encounters

2. Investigative detentions

3. Arrests

There is no mention of *De Bour* in case law or opinion.

Consensual Encounters

"Law enforcement officers do not violate the Fourth Amendment's prohibition of unreasonable seizures merely by approaching individuals on the street or in other public places and putting questions to them if they are willing to listen."[740]

"[M]ere police questioning does not constitute a seizure," and "[s]o long as a reasonable person would feel free 'to disregard the police and go about his business,' the encounter is consensual."[741]

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[736] *Id*. at 294 (quoting Michigan v. DeFillippo, 443 U.S. 31, 37 (1979)).
[737] *Id*. (quoting Illinois v. Gates, 462 U.S. 213, 230–31 (1983)).
[738] *Id.* (quoting United States v. Cortez, 449 U.S. 411, 418 (1981)).
[739] United States v. Wallraff, 705 F.2d 980, 988 (8th Cir. 1983).
[740] United States v. Vera, 457 F.3d 831, 834 (8th Cir. 2006) (quoting United States v. Drayton, 536 U.S. 194, 200 (2002)).

It is "clearly" not a seizure for an officer to approach an individual in a public setting, identify himself as a police officer, and ask the individual to step aside and talk to detectives.[742]

A request to see identification is not a seizure, "as long as the police do not convey a message that compliance with their request is required."[743]

There is no *per se* requirement that an officer inform a citizen of his right to refuse consent, and there is no presumption that consent is invalid where given without an explicit notification of the right to refuse.[744]

That many people agree to speak with police when asked, does not tend to suggest that reasonable persons do not feel free to decline: "'While most citizens will respond to a police request, the fact that people do so, and do so without being told they are free not to respond, hardly eliminates the consensual nature of the response.'"[745]

Only when the officer, by means of physical force or show of authority, has in some way restrained the liberty of a citizen may we conclude that a 'seizure' has occurred.[746]

"We adhere to the view that a person is 'seized' only when, by means of physical force or a show of authority, his freedom of movement is restrained."[747]

The line between a consensual encounter and a *Terry* stop is not a bright line but depends upon the facts of the case.[748]

Investigatory Stops – Reasonable Suspicion

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[741] *Id.* (quoting Florida v. Bostick, 501 U.S. 429, 434 (1991); California v. Hodari D., 499 U.S. 621, 628 (1991)).
[742] *Id.* (quoting Florida v. Rodriguez, 469 U.S. 1, 5–6 (1984)).
[743] *Id*. (quoting *Bostick*, 501 U.S. at 435); *See* United States v. Slater, 411 F.3d 1003, 1006 (8th Cir. 2005)).
[744] *Id*. (citing. *Drayton*, 536 U.S. at 206–07).
[745] *Id*. (citing. *Drayton* 536 U.S. at 205 (quoting INS v. Delgado, 466 U.S. 210, 216 (1984))).
[746] *Id*. (citing *Bostick*, 501 U.S. at 434).
[747] United States v. Poitier, 818 F.2d 679, 683 (8th Cir. 1987) (quoting United States v. Mendenhall, 446 U.S. 544, 553 (1980)).
[748] United States v. Hathcock, 103 F.3d 715, 718 (8th Cir. 1997) (citing United States v. McKines, 933 F.2d 1412, 1419 (8th Cir. 1991)).

In order to pass Fourth Amendment scrutiny, a *Terry* -type stop must be based on a reasonable articulable suspicion of criminal activity, rather than mere conjecture or hunches. In deciding whether the requisite degree of suspicion exists, we view the agents' observations as a whole, rather than as discrete and disconnected occurrences. Further, these observations must be viewed through the eyes of persons who, like the agents in this case, are trained to cull significance from behavior that would appear innocent to the untrained observer.[749]

The scope of an investigatory detention under *Terry* is limited. While an officer may conduct a limited, warrantless search of suspect, if he has a reasonable articulable suspicion that the person may be armed and presently dangerous, officers must use the least intrusive means that are reasonably necessary to protect officer safety.[750]

Where an officer exceeds the permissible scope of *Terry*, the investigatory detention is transformed into an arrest.[751]

Probable Cause to Arrest

A *Terry* stop that becomes an arrest must be supported by probable cause.[752]

NINTH CIRCUIT

Summary:

The Ninth Circuit has three delineated levels of police citizen encounters:[753]

1. Voluntary encounters

2. Investigatory stops

[749] *Poitier*, 818 F.2d at 683 (citing United States v. Wallraff, 705 F.2d 980, 988 (8th Cir. 1983)).
[750] United States v. Aquino, 674 F.3d 918, 923 (8th Cir. 2012) (citing United States v. Fisher, 364 F.3d 970, 973 (8th Cir. 2004)); United States v. Correa, 641 F.3d 961, 967 (8th Cir. 2011); United States v. Navarrete–Barron, 192 F.3d 786, 790 (8th Cir. 1999)).
[751] *Aquino*, 674 F.3d at 924 (citing Peterson v. City of Plymouth, Minn., 945 F.2d 1416, 1419 (8th Cir. 1991)).
[752] *Id.*; *see* United States v. Smith, 648 F.3d 654, 659 (8th Cir. 2011); United States v. Newell, 596 F.3d 876, 879 (8th Cir.2010); Navarrete–Barron, 192 F.3d at 790.
[753] *See generally* United States v. Kerr, 817 F.2d 1384 (9th Cir. 1987).

3. Arrests

There is no mention of *De Bour* in case law or opinion.

Voluntary encounters

Voluntary encounter between citizen and police officer intrudes on no constitutionally protected interest and receives no Fourth Amendment protection.[754]

Not every encounter between the police and the public is entitled to fourth amendment protection. "Only when the officer, by means of physical force or show of authority, has in some way restrained the liberty of a citizen may we conclude that a 'seizure' has occurred."[755]

Continued police questioning cannot be deemed consensual when citizen expresses his or her desire not to cooperate.[756]

When an encounter is voluntary, no constitutionally protected right is implicated; if the stop is involuntary, however, it must be supported by reasonable suspicion based upon articulable facts that criminal activity is afoot.[757]

Investigative Stops – Reasonable Suspicion

To establish founded suspicion to support a temporary detention, the police officer must "point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant the intrusion."[758]

In deciding whether a stop was supported by reasonable suspicion, the court must consider whether "in light of the totality of the circumstances, the officer had a particularized and objective basis for suspecting the particular person stopped of criminal activity."[759]

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[754] *Id*. at 1386.
[755] Terry v. Ohio, 392 U.S. 1, 19 n. 16 (1968).
[756] Morgan v. Woessner, 997 F.2d 1244, 1253 (9th Cir. 1993).
[757] United States v. Summers, 268 F.3d 683, 686 (9th Cir. 2001).
[758] *Terry*, 392 U.S. at 21.
[759] United States v. Berber-Tinoco, 510 F.3d 1083, 1087 (9th Cir. 2007).

Arrests

Lastly, there is probable cause to arrest.[760]

TENTH CIRCUIT

Summary:

The Tenth Circuit has three delineated levels of police citizen encounters:[761]

1. Consensual encounters

2. Investigative detentions

3. Arrests

There is no mention of *De Bour* in case law or opinion.

Consensual Encounters

It is well established that consensual encounters between police officers and individuals implicate no Fourth Amendment interests.[762]

The Supreme Court has "stated that even when officers have no basis for suspecting a particular individual, they may generally ask questions of that individual" and "request consent to search" property belonging to the individual that is otherwise protected by the Fourth Amendment, "as long as the police do not convey a message that compliance with their requests is required."[763]

A "knock and talk" is a consensual encounter and therefore does not contravene the Fourth Amendment, even absent reasonable suspicion.[764]

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[760] *See Terry*, 392 U.S.
[761] United States v. Shareef, 100 F.3d 1491, 1500 (10th Cir. 1996) (citing United States v. Davis, 94 F.3d 1465, 1467–68 (10th Cir. 1996)).
[762] United States v. Prince, 593 F.3d 1178, 1185 (10th Cir. 2010) (citing Florida v. Bostick, 501 U.S. 429, 434 (1991)).
[763] *Id.* at 1185 (citing Florida v. Bostick, 501 U.S. 429, 434 (1991)).
[764] United States v. Cruz-Mendez, 467 F.3d 1260, 1264 (10th Cir. 2006); *see* also United States v. Spence, 397 F.3d 1280, 1283 (10th Cir. 2005).

So long as a reasonable person would feel free to decline the officers' requests or otherwise terminate the encounter, it is consensual."[765]

Even though a person may feel threatened by police questioning they are still "free to leave" during a consensual encounter.[766]

Investigative Detentions

Investigative detentions, or "*Terry* stops," are seizures that are justified only if articulable facts and reasonable inferences drawn from those facts support a reasonable suspicion that a person has committed or is committing a crime.[767]

In *Terry*, the Supreme Court stated that "where a police officer observes unusual conduct which leads him reasonably to conclude in light of his experience that criminal activity may be afoot *and* that the persons with whom he is dealing may be armed and *presently dangerous* ... he is entitled for the protection of himself and others in the area to conduct a carefully limited search of the outer clothing of such persons in an attempt to discover weapons which might be used to assault him."[768]

In determining whether an officer has reasonable suspicion, we examine the "totality of the circumstances."[769]

Since police officers should not be required to take unnecessary risks in performing their duties, they are "authorized to take such steps as are reasonably necessary to protect their personal safety and to maintain the status quo during the course of a *Terry* stop."[770]

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[765] United States v. Mendoza-Trujillo, 46 F .Supp. 3d 1204, 1221 (2014) (quoting *Bostick*, 501 U.S. at 436).
[766] United States v. House, 463 Fed. Appx. 783, 786 (10th Cir. 2012) (citing I.N.S. v. Delgado, 466 U.S. 210, 215 (1984)).
[767] United States v. Seslar, 996 F.2d 1058, 1060 (10th Cir. 1993).
[768] United States v. House, 463 Fed. Appx. 783, 786 (10th Cir. 2012) (citing Terry v. Ohio, 392 U.S. 1, 30 (1968)).
[769] United States v. Shareef, 100 F.3d 1491, 1505 (10th Cir. 1996) (citing United States v. McRae, 81 F.3d 1528, 1534 (10th Cir. 1996) (citing United States v. Fernandez, 18 F.3d 874, 878 (10th Cir. 1994))).
[770] *Id.* at 1502 (citing United States v. Perdue, 8 F.3d 1455, 1462 (10th Cir. 1993)).

"The use of firearms, handcuffs, and other forceful techniques does not necessarily transform a *Terry* detention into a full custodial arrest, for which probable cause is required, when the circumstances reasonably warrant such measures."[771]

Arrests

Probable cause to arrest exists only when the facts and circumstances within the officers' knowledge, and of which they have reasonably trustworthy information, are sufficient in themselves to warrant a man of reasonable caution in the belief that an offense has been or is being committed. Probable cause does not require facts sufficient for a finding of guilt; however, it does require more than mere suspicion.[772]

ELEVENTH CIRCUIT

Summary:

The Eleventh Circuit has three articulated levels of police citizen interaction.

1. Consensual Encounter
2. Investigative Stop
3. Arrest

There is no mention of *De Bour* in case law or opinion.

Consensual Encounter

Police officers' actions in approaching four men in a parking lot and asking them questions was a consensual encounter, which did not implicate the Fourth Amendment at all.[773]

Even if officers had seized defendants while they held their identifications and ran warrant check, any seizure became consensual once police officers returned identifications to

[771] *Id.* (quoting United States v. Melendez–Garcia, 28 F.3d 1046, 1052 (10th Cir. 1994)).
[772] United States v. Cruz-Mendez, 467 F.3d 1260, 1268 (10th Cir. 2006) (quoting United States v. Soto, 375 F.3d 1219, 1222 (10th Cir. 2004).
[773] United States v. Lewis, 674 F.3d 1298, 1303 (11th Cir. 2012)

defendants and commenced conversation that had no threatening or incriminating overtones to it.[774]

The government bears the burden of proving voluntary consent to an encounter based on a totality of circumstances; if a reasonable person would feel free to terminate the encounter, then he or she has not been seized under the Fourth Amendment.[775]

The ultimate inquiry in determining whether a police-citizen encounter was consensual or whether a seizure has occurred under the Fourth Amendment is whether a person's freedom of movement was restrained by physical force or by submission to a show of authority.[776]

Investigative Stop - Reasonable Suspicion

If a citizen's cooperation is induced by coercive means or if a reasonable person would not feel free to terminate the encounter, however, then the encounter is no longer consensual, a seizure has occurred, and the citizen's Fourth Amendment rights are implicated.[777]

Law enforcement officers may seize a suspect for a brief, investigatory Terry stop where (1) the officers have a reasonable suspicion that the suspect was involved in, or is about to be involved in, criminal activity, and (2) the stop was reasonably related in scope to the circumstances which justified the interference in the first place.[778]

The Fourth Amendment does not prohibit a police officer, in appropriate circumstances and in an appropriate manner, from approaching a person for purposes of investigating possibly criminal behavior even though there is no probable cause to make an arrest.[779]

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[774] United States v. Clariot, 655 F.3d 550, 553 (11th Cir. 2011).
[775] United States v. Jordan, 635 F.3d 1181, 1186 (11th Cir. 2011).
[776] *Id*.
[777] *Id*.
[778] *Id*.
[779] *Id*.

In determining whether a police-citizen encounter was consensual or whether a seizure has occurred, the Court of Appeals considers the following factors: whether a citizen's path is blocked or impeded; whether identification is retained; the suspect's age, education and intelligence; the length of the suspect's detention and questioning; the number of police officers present; the display of weapons; any physical touching of the suspect, and the language and tone of voice of the police.[780]

Individualized suspicion is not an absolute prerequisite for every constitutional search or seizure.[781]

As a general matter, under *Terry*, reasonable suspicion of criminal activity must attach to the particular person stopped.[782]

The presence of a visible, suspicious bulge on an individual may give rise to reasonable suspicion justifying a *Terry* stop, particularly when the individual is present in a high-crime area.[783]

Probable Cause to Arrest

An arrest is unreasonable and, therefore, violates the Fourth Amendment, when it is not supported by probable cause; probable cause is defined in terms of facts and circumstances sufficient to warrant a prudent man in believing that the suspect had committed or was committing an offense.[784]

IV. SUMMARY

From the findings, no state has decided to follow in *De Bour*'s footsteps.

[780]. *Jordan*, 635 F.3d at 1186.
[781] United States v. Lewis, 674 F.3d 1298,1306 (11th Cir. 2012).
[782] *Id.* at 1305.
[783] United States v. Jordan, 635 F.3d 1181, 1186 (11th Cir. 2011).
[784] Fish v. Brown, 838 F.3d 1153, 1167 (11th Cir. 2016).

Specifically, twenty-four states (including District of Columbia) utilize a tiered model in police citizen encounters.[785] Unlike New York, however, of those twenty-four, only two have a four-tiered model, also including the Sixth Circuit.[786] The rest of these states apply a variation of the three levels: consensual or voluntary encounters, investigative detentions, and arrests.[787]

Accordingly, no state has adopted the *De Bour* standard, although the Court of Appeals for the District of Columbia utilizes the opinion in assessing what constitutes a seizure for Fourth Amendment purposes.[788]

No court has expressly rejected the *De Bour* model, although an unreported case states that the reasoning in the seminal case of police citizen encounters in Alaska, *Waring*, implicitly rejects the reasoning set forth by *People v. De Bour*. The Alaskan court opines that so long as the officer is in a place where he has a legal right to be, Fourth Amendment doctrine is not triggered.[789]

On the federal level, all of the federal circuits follow *Terry v. Ohio* and adopt three levels of police citizen encounters: consensual or voluntary encounters, investigative stops, and arrests,[790] with the exception of the Sixth Circuit, which follows a four tiered approach of pre-contact, consensual encounters, investigative detentions, and arrests.[791] The Pre-Contact stage governs the motivation and suspicion that draws police officers to target citizens. While there are no Fourth Amendment protections in this stage, the Equal Protection Clause does apply, if they become the target of a police investigation solely on the basis of skin color.[792]

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[785] *See infra* Table I (summarizing nation-wide police citizen encounters).
[786] *Id.*
[787] *Id.*
[788] *See supra* note 116–18 and accompanying text.
[789] *See supra* note 55 and accompanying text; *see also* Waring v. State, 670 P.2d 357, 363 (1983).
[790] *See infra* Table I.
[791] *See supra* note 707 and accompanying text.
[792] *See supra* note 708 and accompanying text.

Overall, twenty-five states failed or refused to articulate defined levels of police citizen encounters.[793] Vermont held that a concept of justified suspicion is not susceptible of precise definition,[794] while Wisconsin held the concept does not readily reduce to a neat set of legal rules.[795]

Six states have codified some aspect of the reasonable suspicion/temporary detention interaction. These states have codified all or most of the Terry doctrine into statutes: Wisconsin,[796] Rhode Island,[797] Louisiana,[798] Nevada,[799] Oregon,[800] and Iowa.[801]

[793] *See infra* Table I.
[794] *See supra* note 591 and accompanying text.
[795] *See supra* note 639 and accompanying text.
[796] WIS. STAT.§968.24 (Temporary Questioning Without Arrest) and 968.25 (Search During Temporary Questioning).
[797] 7 R.I. GEN. LAWS ANN. §12-7-1 (West 2016).
[798] LA. CODE. CRIM PROC. ART. 215.1(B) (West 1997).
[799] NEV. REV. STAT §171.123. (West 1995).
[800] OR. REV. STAT. ANN. ART. §131.615 (West 2014).
[801] IOWA CODE ANN. §321.174(3) (West 2015); *See supra* page 44 and accompanying text.

LEVELS

Level One- Objective Credible Reason allows for P.O. to Approach to request information.

Level Two- Founded Suspicion allows for Common law right of inquiry.

Level Three- Reasonable Suspicion allows for P.O. to Stop and Frisk.

Level Four- Probable Cause allows for P.O. to Arrest and Full search.

TABLES

TABLE I

	COMPARISON OF LEVELS OF POLICE-CITIZEN INTERACTION				
STATES/CIRCUITS	LEVEL 1	LEVEL 2	LEVEL 3	LEVEL 4	4TH NOT TRIGGERED/ CONSENSUAL ENCOUNTER
ALABAMA			☐	☐	4TH NOT TRIGGERED
ALASKA			☐	☐	4TH NOT TRIGGERED
ARIZONA			☐	☐	4TH NOT TRIGGERED
ARKANSAS			☐	☐	CONSENSUAL ENCOUNTERS
CALIFORNIA			☐	☐	CONSENSUAL ENCOUNTERS
COLORADO			☐	☐	CONSENSUAL ENCOUNTERS
CONNECTICUT			☐	☐	4TH NOT TRIGGERED
D. OF COLUMBIA			☐	☐	CONSENSUAL ENCOUNTERS
DELAWARE			☐	☐	CONSENSUAL ENCOUNTERS
FLORIDA			☐	☐	CONSENSUAL ENCOUNTERS
GEORGIA			☐	☐	NON-COERCIVE CONVERSATION
HAWAII			☐	☐	RANDOM OR CONSENSUAL ENCOUNTERS
IDAHO			☐	☐	CASUAL OR CONSENSUAL ENCOUNTERS
ILLINOIS			☐	☐	CONSENSUAL ENCOUNTERS/ COMMUNITY CARETAKING
INDIANA			☐	☐	CONSENSUAL ENCOUNTERS
IOWA			☐	☐	4TH NOT TRIGGERED
KANSAS			☐	☐	VOLUNTARY ENCOUNTERS & PUBLIC SAFETY STOPS
KENTUCKY			☐	☐	CONSENSUAL ENCOUNTERS
LOUISIANA			☐	☐	BRIEF ENCOUNTERS
MAINE			☐	☐	4TH NOT TRIGGERED
MARYLAND			☐	☐	CONSENSUAL ENCOUNTERS
MASSACHUSETTS			☐	☐	4TH NOT TRIGGERED

MICHIGAN			☐	☐	**4TH NOT TRIGGERED**
MINNESOTA			☐	☐	**4TH NOT TRIGGERED**
MISSISSIPPI			☐	☐	**VOLUNTARY CONVERSATION**
MISSOURI			☐	☐	**CONSENSUAL ENCOUNTERS**
MONTANA			☐	☐	**4TH NOT TRIGGERED**
NEBRASKA			☐	☐	**VOLUNTARY STOPS**
NEVADA			☐	☐	**CONSENSUAL ENCOUNTERS**
NEW HAMPSHIRE			☐	☐	**CONSENSUAL ENCOUNTERS**
NEW JERSEY			☐	☐	**FIELD INVESTIGATION OR COMMUNITY CARETAKER**
NEW MEXICO			☐	☐	**CONSENSUAL ENCOUNTERS**
NEW YORK	☐	☐	☐	☐	
NORTH CAROLINA			☐	☐	**NO COERCION OR COMPULSION**
NORTH DAKOTA			☐	☐	**COMMUNITY CARETAKING**
OHIO			☐	☐	**CONSENSUAL ENCOUNTERS**
OKLAHOMA			☐	☐	**4TH NOT TRIGGERED**
OREGON			☐	☐	**CONVERSATIONS**
PENNSYLVANIA			☐	☐	**MERE ENCOUNTER**
RHODE ISLAND			☐	☐	**4TH NOT TRIGGERED**
SOUTH CAROLINA			☐	☐	**4TH NOT TRIGGERED**
SOUTH DAKOTA			☐	☐	**4TH NOT TRIGGERED**
TENNESSEE			☐	☐	**BRIEF ENCOUNTERS**
TEXAS			☐	☐	**CONSENSUAL ENCOUNTERS**
UTAH			☐	☐	**APPROACH**
VERMONT			☐	☐	**4TH NOT TRIGGERED**
VIRGINIA			☐	☐	**CONSENSUAL ENCOUNTERS**
WASHINGTON			☐	☐	**4TH NOT TRIGGERED**
WEST VIRGINIA			☐	☐	**4TH NOT TRIGGERED**
WISCONSIN			☐	☐	**4TH NOT TRIGGERED**
WYOMING			☐	☐	**NO COERCION OR DETENTION**
FIRST CIRCUIT			☐	☐	**4TH NOT TRIGGERED**
SECOND CIRCUIT			☐	☐	**CONSENSUAL ENCOUNTERS**
THIRD CIRCUIT			☐	☐	**CONSENSUAL ENCOUNTERS**
FOURTH CIRCUIT			☐	☐	**CONSENSUAL ENCOUNTERS/ COMMUNITY CARETAKING**
FIFTH CIRCUIT			☐	☐	**CONSENSUAL QUESTIONING**
SIXTH CIRCUIT			☐	☐	**PRE-CONTACT & CONSENSUAL ENCOUNTER**
SEVENTH CIRCUIT			☐	☐	**NON-COERCIVE QUESTIONING**
EIGHTH CIRCUIT			☐	☐	**CONSENSUAL ENCOUNTERS**
NINTH CIRCUIT			☐	☐	**VOLUNTARY ENCOUNTERS**
TENTH CIRCUIT			☐	☐	**CONSENSUAL ENCOUNTERS**
ELEVENTH CIRCUIT			☐	☐	**CONSENSUAL ENCOUNTERS**

DE BOUR CITATIONS

TABLE II

STATES/ CIRCUITS	CITATIONS
ALASKA	• *State v. Smith*, No. a-435, 1985 WL 1078021, at *2 (1985).
ARKANSAS	• *State v. McFadden*, 938 S.W.2d 797, 799 (1997). • *Baxter v. State*, 626 S.W.2d 935, 937 (1982).
COLORADO	• *People v. Davis*, 565 P.2d 1347, 1350 (1977). • *People v. Figueroa*, 592 P.2d 19, 20 (1979).
DISTRICT OF COLUMBIA	• *United States v. Johnson*, 540 A.2d 1090, 1098 (1988). • *In Re J.G.J.*, 388 A.2d 472, 476 (1978). • *Little v. United States*, 393 A.2d 94, 96 (1978).
GEORGIA	• *Edwards v. State*, 301 S.E.2d 693, 694 (1983).
ILLINOIS	• *People v. McGowan*, 359 N.E.2d 220, 223 (1997).
MARYLAND	• *Watkins v. State*, 420 A.2d 270, 276 (1980). • *Ransome v. State*, 816 A.2d 901, 906 (2003). • *Farrow v. State*, 514 A.2d 35, 41 (1986).
MASSACHUSETTS	• *Commonwealth v. Keane*, 368 N.E.2d 828, 828 (1977). • *Commonwealth v. McCauley*, 419 N.E.2d 1072, 1074 (1981).
MICHIGAN	• *People v. Walker*, 343 N.W.2d 528, 532 n.2 (1983).
NEW JERSEY	• *State in the interest of H.B.*, 381 A.2d 759, 769 (1977). • *State v. Williams*, 598 A.2d 1258, 1269 (1991). • *State v. Goree*, 742 A.2d 1039, 1049-50 (2000).
OHIO	• *State v. Wood*, No. L-77-149, 1977 Ohio App. LEXIS 9878, at *4 (6th Dist. December 23, 1977).
OREGON	• *State v. Warner*, 585 P.2d 681, 689, 691 n.4 (1978). • *State v. Backstand*, 313 P.3d 1084, 1113 (2013).
PENNSYLVANIA	• *Commonwealth v. Williams*, 429 A.2d 698, 700 (1981). • *United States v. Jones*, 657 F. Supp. 492, 499 (W.D. Pa. 1987).
TEXAS	• *Molina v. State*, 754 S.W.2d 468, 471 (1988).
UTAH	• *State v. Whittenback*, 621 P.2d 103, 105 (1980).
VIRGINIA	• *Lawson v. Commonwealth*, 217 VA. 354, 356 (1976).
WASHINGTON	• *State v. Larson*, 587 P.2d 171, 173 (1978).
WEST VIRGINIA	• *State v. Boswell*, 294 S.E.2d 287, 293 (1982).
SECOND CIRCUIT	• *Johnson v. Metz*, 609 F.2d 1052, 1056, n.4 (2d Cir. 1979). • *United States v. Hooper*, 935 F.2d 484, 490-91 (2d Cir. 1991). • *Ligon v. City of New York*, 925 F. Supp. 2d 478, 538-39 (S.D.N. Y. 2013). • *Johnson v. City of Mt. Vernon*, 10 CV 7006 (VB), 2012 U.S.

	Dist. LEXIS 144153, at *10 (S.D.N.Y. September 18, 2012). • *Brown v. Brown*, 05 Civ. 10434 (RCC) (AJP), 2006 U.S. Dist. LEXIS 85306, n.36 (S.D.N.Y. November 27, 2006).

V. ANALYSIS AND CONCLUSIONS

Our research indicates that no other state over the past forty years has adopted *De Bour*. New York is the only state in the union that forbids police officers to talk to people they meet in the street unless certain preconditions are met, and requires the suppression of evidence derived from any conversation[802] held to be unlawful. *De Bour* is exceptionally unique in its ideology, holding that there are Fourth Amendment interests to be protected when, in fact, no seizure has occurred, in stark contrast with the Supreme Court's Fourth Amendment jurisprudence.[803]

The Court's purpose in *De Bour* was to provide clear guidelines for police officers seeking to act lawfully in what are fast moving street encounters and to offer a cohesive framework for courts reviewing the propriety of police conduct in those situations.[804] At the time *De Bour* was decided, New York courts were flooded with search and seizure cases. After all, in the wake of *Terry v. Ohio*, the nation was left with a "Terry frisk" doctrine without any further guidance from the Supreme Court and it would not be for another four years before the Supreme Court would address the issue in a litany of search and seizure cases.[805] In many cases, New York suppression courts held that searches were legitimate because the stop was based on

[802] People v. Garcia, 20 N.Y.3d 317, 325 (2012) (Smith, J., dissenting); *see also* Davis v. United States, 564 U.S. 222, 237 (2011) ("Real deterrent value is a 'necessary condition for exclusion,' but it is not a sufficient one. The analysis must also account for the 'substantial social costs' generated by the rule. Exclusion exacts a heavy toll on both the judicial system and society at large. It almost always requires courts to ignore reliable, trustworthy evidence bearing on guilt or innocence. And its bottom-line effect, in many cases, is to suppress the truth and set the criminal loose in the community without punishment. Our cases hold that society must swallow this bitter pill when necessary, but only as a 'last resort.' For exclusion to be appropriate, the deterrence benefits of suppression must outweigh its heavy costs").

[803] *See* United States v. Mendenhall, 446 U.S. 544, 554 (1980); *see also* United States v. Berry, 670 F.2d 583, 591 (5th Cir. 1982) (finding that the Supreme Court holdings sculpt out, at least theoretically, three-tiers of police citizen encounters: communication between police and citizens involving no coercion or detention and therefore without the compass of the Fourth Amendment, brief 'seizures' that must be supported by reasonable suspicion, and full-scale arrests that must be supported by probable cause).

[804] *See generally* People v. Moore, 6 N.Y.3d 496 (2006).

[805] *See* United States v. Mendenhall, 446 U.S. 544 (1980); Florida v. Royer, 460 U.S. 491 (1983); I.N.S. v. Delgado, 466 U.S. 210 (1984); Florida v. Bostick, 501 U.S. 429 (1991); California v. Hodari D., 499 U.S. 621 (1991).

suspicious activity thereby justifying a "Terry frisk." However, in other cases trial courts held that the stop was based on pretextual activity concocted by the police (e.g. the spotting of a dropped envelope or the bulge in a suspect's belt). In other cases, courts found that without "reasonable suspicion" a "suspect" could not be questioned at all. The lack of consistency in the trial courts, along with the lack of guidance from the Supreme Court, became the motivating factor for *De Bour*.[806] The reality, however, is that regardless of what motivated the adoption of *De Bour*, as well intended as it was, *De Bour* has failed to provide either the clarity or guidance that it sought. And, unfortunately, the courts' slavish devotion to its unworkable structure has not served to benefit anyone.

De Bour's "unique" approach has been criticized by one of the leading treatises on searches and seizures as likely to result in "such confusion and uncertainty that neither police nor courts can ascertain with any degree of confidence precisely what it takes" to comply with its requirements.[807] It is telling that in the forty years since *De Bour* was decided, not a single state has adopted it. Rather, other states seem to implicitly reject *De Bour*'s framework, relying on a three-tiered system of (1) non-seizure encounter requiring no grounds, (2) reasonable suspicion to stop and frisk, and (3) probable cause to arrest.[808] In *People v. Garcia*, the Court of Appeals expanded the already hyper-stringent rule of *People v. De Bour*, 40 N.Y.2d 210, (1976) and *People v. Hollman*, 79 N.Y.2d 181 (1992) to automobiles, indicating that the New York State Court of Appeals shows no signs of reversing or modifying *De Bour*.

[806] *See generally* People v. De Bour, 40 N.Y.2d 210 (1976); *see also* People v. Hollman, 79 N.Y.2d 181 (1992). The authors also reached out to former Chief Judge of the New York Court of Appeals, Sol Wachtler, for commentary.
[807] 4 WAYNE R. LAFAVE, SEARCH AND SEIZURE § 9.4[E] AT 466, 468–469 [4TH ED 2004].
[808] *See supra* Table I.

Much confusion stems from the first and second tiers of *De Bour*: level one, the right to approach and request information and level two, the common law right to inquire. In *People v. Hollman*, the Court addressed this by defining subtle differences:

> Once the officer asks more pointed questions that would lead the person approached reasonably to believe that he or she is suspected of some wrongdoing and is the focus of the officer's investigation, the officer is no longer merely seeking information. This has become a common-law inquiry that must be supported by a founded suspicion that criminality is afoot.[809] Further, the distinction: [R]ests on the content of the questions, the number of questions asked, and the degree to which the language and nature of the questions transform the encounter from a merely unsettling one to an intimidating one. We do not purport to set out a bright line test for distinguishing between a request for information and a common-law inquiry. These determinations can only be made on a case-by-case basis.[810]

The "splitting hairs" difference between level one and level two has been a source of confusion among prosecutors, defense attorneys, and judges; some attorneys even carry an index card into court listing the tiers of *De Bour*. Professor LaFave comments that *De Bour* assumes that courts will develop, and police will apply, three separate and distinct evidentiary standards below probable cause for arrest—an "objective credible reason," which is less than "a founded suspicion," which in turn is less than "a reasonable suspicion."[811] Adding to the confusion, other states use the terms "founded suspicion" and "reasonable suspicion" interchangeably.[812]

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[809] *Hollman*, 79 N.Y.2d at 185.
[810] *Id.* at 192.
[811] Adding to the confusion is the New York element of flight in real time rapidly unfolding street encounters. *See* People v. Martinez, 80 N.Y.2d 444, 446 (1992) "Police-citizen encounters take a variety of forms, ranging from a request for information to an arrest. The greater the level of police interference, the greater the quantum of information necessary to justify it. Thus, we have held that the police need have only some objective credible reason to approach a citizen for information, but they must have probable cause to believe that a crime is or has been committed to support an arrest. There is a broad range of legitimate police activity between these two extremes, however, encounters which involve more than an informational stop and less than an arrest. Included among them are forcible stops and seizures which take place whenever an individual's freedom of movement is significantly impeded. Illustrative is police action which restricts an individual's freedom of movement by pursuing one who, for whatever reason, is fleeing to avoid police contact. Because the resulting infringement on freedom of movement is similar, both forcible stops and pursuits require the same degree of information to justify them." (internal citations omitted).
[812] *See supra* notes 144–46 (Florida) and accompanying text.

Furthermore, the Supreme Court has rejected in similar schemes in the past, believing them to be much too confusing for the parties involved.[813]

The question then becomes whether *De Bour* is really in the public interest. If prosecutors, defense attorneys, and judges alike remain confounded by the intricacies of *De Bour*, then it stands to reason that the police officers who are expected to follow the guidelines of *De Bour* during the course of their official law enforcement and public service duties are going to be confounded by the tiered levels as well.[814] This confusion will then lead officers to ignore these tiers during high stress situations and that will be detrimental to all parties involved: police officers, prosecutors, defense attorneys, judges, and the very citizens that *De Bour* is developed to protect. Professor LaFave states that in practice, this confusion causes appellate courts to defer to the trial courts and trial courts then defer to the police.[815] *De Bour*, then, is unrealistic in its assumption that police officers will guided by it in real time, during unpredictable encounters. Hence, on the street, the privacy interests of citizens gain no greater protection.

If New York wishes to provide greater protections for citizens and their individual liberties, perhaps a better and more effective way would be to adopt a different but less confusing system. For instance, the Sixth Circuit four-tiered system seems to afford its citizens broad protections in their level one Pre-Contact tier, but keeps the standard three tiers as their

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[813] *See* United States v. Montoya de Hernandez, 473 U.S. 531, § 10.5 (b) (1985); the lower court's "clear indication" test for other than routine border searches was rejected on the ground that a "third verbal standard" between "reasonable suspicion" and "probable cause" would likely "obscure rather than elucidate the meaning of the provision in question."

[814] *See supra* note 8 (Conversation between the Chief of Training and a career prosecutor explaining that *De Bour* is unteachable and thus the police academy teaches officer survival) and accompanying text.

[815] 4 WAYNE R. LAFAVE, SEARCH AND SEIZURE § 9.4[E] AT 466, 468–469 [4TH ED 2004]; *see also* Dunaway v. New York, 442 U.S. 200 (1979) (In effect, respondents urge us to adopt a multifactor balancing test of 'reasonable police conduct under the circumstances' to cover all seizures that do not amount to technical arrests. But the protections intended by the Framers could all too easily disappear in the consideration and balancing of the multifarious circumstances presented by different cases, especially when that balancing may be done in the first instance by police officers engaged in the 'often competitive enterprise of ferreting out crime.' … A single, familiar standard is essential to guide police officers, who have only limited time and expertise to reflect on and balance the social and individual interests involved in the specific circumstances they confront).

tiers two to four. This Pre-Contact stage, prior to the consensual encounter, occurs when officers observe citizens, and decide to "target" someone for further surveillance.[816] While there are no Fourth Amendment protections in this stage, the Equal Protection Clause does apply, if they become the target of a police investigation solely on the basis of skin color.[817] Consequently, when police officers compile several reasons before initiating an interview, as long as some of those reasons are legitimate, there is no Equal Protection violation.[818]

In light of our state and federal findings, *De Bour* makes New York the national outlier, possibly making it more trouble than it is worth and should thus be re-evaluated. Though he has previously stated that he does not advocate overturning it, former Chief Judge of the Court of Appeals, Sol Wachtler, who wrote the *De Bour* opinion, has said that "no decision is 'immutable' and any precedent that has been in place for 40 years should be evaluated by the Legislature."[819] He has further commented that he is "surprised that *De Bour* has managed to survive for 40 years"[820] and that "some day technology, a constitutional interpretation, or the evolution of the common law will change the *De Bour* formulation—but we may have to wait another 40 years."[821] After all, this social experiment has lasted for 40 years and nothing lasts forever. Perhaps it is time that New York finds a different way.

What this project has proven is that the other 49 states and the federal system that have not operated under the confusion of this Fourth Amendment architecture have not descended into police states, nor have we, saddled with this artificial *De Bour* sliding scale, lurched toward

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[816] *See supra* note 707 and accompanying text.
[817] *See supra* note 708 and accompanying text.
[818] *See supra* note 709 and accompanying text.
[819] Andrew Deney, *After 40 Years, 'De Bour' Author Sees Need for a Fresh Look*, N.Y. LAW J. (May 23, 2016), http://www.nycbar.org/media-listing/media/detail/after-40-years-de-bour-author-sees-need-for-a-fresh-look-new-york-law-journal.
[820] The authors reached out to former Chief Judge of the New York Court of Appeals Sol Wachtler for a personal quote.
[821] *Id.*

anarchy. However, we have succeeded in creating an uneven enforcement of our laws, often not determined by the nature and quality of the evidence of guilt or innocence, but, rather, by the freakish quirks of fate visited by the application of a standard that does not mean the same thing to any two individuals, who participate in the criminal justice system. It is difficult not to conclude that, in the main, we would all be better without it.