



## **Law Enforcement Officer Considerations When Encountering an Individual with a Firearm**

The following information is not intended to provide or serve as legal advice. Law Enforcement Officers (LEOs) should consult with their agency administration and their county/district attorney or legal counsel for further guidance on the law or the agency's policy and/or procedures regarding contact with individuals who are carrying or are in possession of a firearm. Additional review of Kansas statutes (revised or newly enacted) and Kansas Attorney General Opinions (if rendered) may be required.

LEO considerations when encountering an individual with a firearm:

### *General Considerations -*

*Terry v. Ohio - without probable cause, a LEO may "detain a person to investigate suspected criminal behavior"*

- If a LEO observes an individual 21 years of age or older in possession of a firearm, the individual may not be detained simply because he or she is armed. Anyone who is legally able to possess a firearm under Federal or State law may carry a firearm on their person "openly" or "concealed." Individuals have a right to be left alone and a LEO must articulate reasonable suspicion the suspect has, is or is about to commit a crime in order to stop an individual.
- If a LEO observes an individual possessing a gun that LEO may approach the individual, ask for the individual's name and identification as long as the encounter is voluntary or the LEO otherwise has a legal basis to stop the individual.
- A LEO is allowed to engage in conversation and even ask questions of the individual as long as the individual wouldn't feel their freedom has been restricted. If the individual no longer wants to talk with the officer, unless the officer has developed reasonable suspicion of criminal activity, the subject may not be detained further based solely on the fact they are armed.
- Without making an arrest, KSA 22-2402(1) states a law enforcement officer may stop any person in a public place whom such officer reasonably suspects is committing, has committed or is about to commit a crime and may demand of the name, address of such suspect and an explanation of such suspect's actions.

- *Terry v. Ohio* requires the LEO to articulate a safety concern. Pursuant to a Terry stop, “police may stop and frisk a person if they have reasonable suspicion that the person is engaged in criminal activity and when officers have a reasonable belief the person poses a safety concern.” KSA 22-2402 has codified the holding in the Supreme Court case of *Terry v. Ohio*.
- If an officer can articulate additional factors, other than the individual being armed, a LEO may pat an individual down and even secure the individual’s weapon until the officer has concluded the stop.
- If an individual possesses a gun an officer should be mindful of officer safety considerations. An officer may only pat an individual down if the officer obtains consent from the individual or the officer can articulate a pat down is necessary for officer safety or the safety of others.
- KSA 22-2402(2) states “when a law enforcement officer has stopped a person for questioning pursuant to this section and reasonably suspects that such officer’s personal safety requires it, such officer may frisk such person for firearms or other dangerous weapons. If the law enforcement officer finds a firearm or weapon, or other thing, the possession of which may be a crime or evidence of a crime, such officer may take it and keep it until the completion of the questioning, at which time such officer shall either return it, if lawfully possessed, or arrest the person.”
- There are court cases that provide guidance of limited circumstances where officers were able to remove a gun from an individual but the facts must be specific. For example in *United States v. King*, 990 F.2d 1552, 1562 (10th Cir. 1993) (although driver legally possessed a loaded gun, officer was entitled to separate the vehicle occupants from the pistol for the duration of the stop). Ultimately, the court in *King* held that the officer’s act of pointing her gun at the driver, ordering him to place his hands on the steering wheel, and threatening to shoot him if he did not comply with her order exceeded the lawful scope of a Terry stop. *King*, 990 F.2d at 1563.
- See also *United States v. Rodriguez*, 601 F.3d 402 (5th Cir. 2010) (police were justified in temporary seizure of shotgun while investigating a domestic disturbance). See also *United States v. Gordon*, 741 F.3d 64, 71 (10<sup>th</sup> Cir. 2014)(Temporary seizures of persons or objects may be permissible when reasonably connected to the safety of officers . . . or others).

While temporary seizure may be allowed, the weapon needs to be returned as soon as the situation is stabilized and there is no more risk of immediate harm. *Gordon*, 741 F.3d at 71. And once a person has been separated from something that potentially contains a weapon, no further search of that item is appropriate absent probable cause and exigent circumstances or consent. See *State v. Johnson*, 293 Kan. 959, 968, 270 P.3d 1135 (2012)(suppressing methamphetamine found in a cigarette pack).

## Traffic Stops

- If a LEO learns a driver has a firearm in the car that LEO may engage in conversation with the driver and/or take measures to ensure LEO safety if factors warrant it.
  - Drivers who are able to legally possess a firearm under Federal and State law are also allowed to possess a firearm in their car. A driver and/or passenger must be 21 years of age or older to carry concealed lawfully.

- A LEO may detain an individual on a traffic stop for a reasonable period of time to address the violation of that warranted stop.
- Beyond determining whether to issue a traffic ticket, an officer's mission during the traffic stop typically includes checking the driver's license, determining whether there are outstanding warrants against the driver, and inspecting the automobile's registration and proof of insurance.
- Absent reasonable suspicion an extension of a traffic stop would constitute an unreasonable seizure.
- Absent reasonable suspicion a LEO must be mindful that running criminal history of the driver is generally not standard on a traffic stop and may lengthen the detention and turn the encounter into an unreasonable seizure.
- Absent specific legal authority, any surrender of a lawfully carried firearm must be voluntary.
- LEOs are not authorized to search any lawfully carried firearm that has been surrendered voluntarily. Any search of the firearm must be based on probable cause or consent. An unauthorized search would include running the firearm's serial number.
- The driver may be asked to keep his or her hands on the steering wheel where the LEO can see them when the driver is not being instructed to produce their driver's license and registration.
- For LEO safety, it may be helpful for a LEO to inform the driver why the LEO might be apprehensive when someone has access to a firearm while still explaining to the driver the LEO respects the driver's ability to lawfully carry a firearm.
- A LEO can ask questions in a way that could lead to voluntary cooperation with the driver such as: "Would you mind stepping out of the vehicle and moving to a safe location while we finish our business here?"
- A LEO may ask the driver if they would mind if the LEO locked the firearm in the driver's trunk while finishing the traffic stop. This cannot be used as a ruse to look into the driver's trunk but simply as a LEO safety measure.
- The LEO may even ask the driver "Would you mind if I hold your gun until we finish our business?"

# KLETC

