Chapter 1

Investigative Detentions

Introduction

**Definition:** An investigative detention is a temporary seizure of a suspect for the purpose of determining, (1) whether there is probable cause to arrest him, (2) whether further investigation is necessary, or (3) whether the officer's suspicions were unfounded.\(^1\)

**Other types of detentions**

- **Traffic stops:** A traffic stop is a car stop based on probable cause or reasonable suspicion that the driver committed a traffic infraction. See Chapter 3 TRAFFIC STOPS.
- **Special needs detentions:** A special needs detention is a temporary seizure of a person for a legitimate non-investigative purpose. See Chapter 2 SPECIAL NEEDS DETENTIONS.
- **Detentions on school grounds:** See Chapter 2 SPECIAL NEEDS DETENTIONS (Detentions on school grounds).
- **Detentions pending issuance of search warrant:** Officers may detain a suspect pending issuance of a search warrant if, (1) there is probable cause for the warrant; (2) probable cause to arrest the suspect would exist if the sought-after evidence was found during the search; and (3) officers were diligent in seeking and executing the warrant.\(^2\)
- **Detentions of property:** Officers may "detain" (seize) property for a reasonable period of time if there is reasonable suspicion to believe that it is evidence of a crime or contains evidence; e.g., officers detained a suitcase while seeking a warrant to search it.\(^3\)
- **Detentions of mail:** Mail may be detained without reasonable suspicion if the detention does not significantly interfere with its timely delivery in the normal course of business.\(^4\)
- **Detentions for parking violations:** If officers have probable cause to cite the driver of a car for a parking violation, they may detain him for the purpose of writing a citation or investigating the matter.\(^5\)

**When a suspect is “detained”**

- **The test: Free to terminate:** To determine whether a suspect was detained, the courts apply the “free to terminate” test. See Chapter 4 INVESTIGATIVE CONTACTS (Free to terminate test).
- **Car stops: Automatic detention of occupants:** When officers make a car stop, the driver and all occupants are automatically detained as a result of the stop. See Chapter 3 TRAFFIC STOPS (Precautions directed at passengers), and Chapter 62 STANDING (Cars, Passengers).

**Grounds to detain:** Investigative detentions are permitted as follows:

- **Reasonable suspicion:** Officers had reasonable suspicion to believe the detainee was committing, was about to commit, or had recently committed a crime; or that he was a fugitive or truant.\(^6\) Also see Chapters 29-31 PROBABLE CAUSE AND REASONABLE SUSPICION.
- **Probation or parole search:** Officers knew that the detainee was on parole or on probation with a search condition, and the purpose of the detention was to conduct a probation or parole search. See Chapter 15 PROBATION AND PAROLE SEARCHES.
Detention procedure

Generally
What officers may do: Officers may do only those things that are reasonably necessary to, (1) investigate the matter, and (2) ensure their safety.7
Increased scope: If circumstances change, officers may respond accordingly.8
De facto arrests: A detention becomes a de facto arrest if it was excessive in scope or unnecessarily intrusive. A de facto arrest is an illegal arrest unless probable cause existed.9

Totality of circumstances: In determining whether a detention had become a de facto arrest, the courts consider the totality of circumstances.10
No unrealistic second-guessing: A detention does not become a de facto arrest merely because it could have been completed faster or less intrusively. What counts is whether the officers acted unreasonably, keeping in mind that most detentions are swiftly developing, and that a creative judge “can almost always imagine some alternative means by which the objectives of the police might have been accomplished.”11
No “least intrusive means” test: In the past, some courts ruled a de facto arrest would result if officers failed to employ the least intrusive means of pursuing their investigation. That test has been abrogated.12

Diligence: Officers who have detained a suspect must carry out their duties diligently.13
No time limits: There are no automatic time limits.14
Delay attributable to detainee, other circumstances: Delays resulting from the actions of the detainee or from other circumstances over which the officers had no control will not result in a de facto arrest if the officers responded diligently.15

Grounds to investigate another crime: If, during the course of a detention, officers develop reasonable suspicion to believe that the detainee committed another crime, they may prolong the detention to investigate the matter.16
Terminating the detention: Officers must promptly terminate the detention when they have completed their duties.17

Force: Use of force will not transform a detention into a de facto arrest if the force was reasonably necessary.18 Relevant circumstances include “the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officers or others, and whether he is actively resisting or attempting to evade arrest by flight.”19

Arrest for 148: If force is reasonably necessary, the detainee will usually be arrestable for a violation of Penal Code § 148.

Restraint by police dog: If reasonably necessary, an officer may utilize a police dog to restrain a resisting detainee.20

Officer-safety precautions
All detentions: The following precautions may be taken during all detentions:
Taking command: Officers may take “unquestioned command” of the detention.21
Keep hands in sight: Officers may order the detainee to remove his hands from his pockets, and keep his hands in sight.22
Handcuffing: Officers may handcuff the detainee if reasonably necessary; e.g., detainee was combative, detention for violent crime, multiple detainees.23
Tight handcuffs: Handcuffs must not be applied more tightly than necessary.24
Duration: Handcuffs must not be applied for an unreasonable length of time.25

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1 CAL: People v. McLean (1970) 6 Cal.App.3d 300, 306 [“The purpose of temporary detention for questioning is to enable law enforcement officers to determine whether to make an arrest, investigate further or take no action because they are satisfied with the explanation given.”]; People v. Manis (1969) 268 Cal.App.2d 653, 665 [“The stopping and questioning by police officers of persons whose conduct, although suspicious, does not give probable cause for arrest, essentially amounts to a halfway house between the station of arrest on probable cause and that of
official inaction.”]; People v. Haugland (1981) 115 Cal.App.3d 248, 255 [“The whole purpose of a detention . . . is to enable the police to quickly determine whether they should allow the suspect to go about his business or hold him to answer charges.”].


4 9th CIR: U.S. v. Choudhry (9th Cir. 2006) 461 F.3d 1097, 1103 [“Although California has enacted a civil administrative process to enforce parking penalties, it has not removed parking regulation from the division of the Vehicle Code that covers moving traffic violations.”]. OTHER FED: U.S. v. Graham (6th Cir. 2007) 483 F.3d 431.

5 USSC: Alabama v. White (1990) 496 U.S. 325, 329-30; United States v. Sokolow (1989) 490 U.S. 1, 7 [“In Terry v. Ohio (1968) 392 U.S. 1, we held that the police can stop and briefly detain a person for investigative purposes if the officer has a reasonable suspicion supported by articulable facts that criminal activity ‘may be afoot,’ even if the officer lacks probable cause.”]. CAL: People v. Tony C. (1978) 21 Cal.3d 888, 893.

6 USSC: Terry v. Ohio (1968) 392 U.S. 1, 23 [“The officers were authorized to take such steps as were reasonably necessary to protect their personal safety and to maintain the status quo during the course of the stop.”]. CAL: People v. Manis (1969) 268 Cal.App.2d 653, 665 [“The purpose of detention is to keep things as they are during the investigation.”]; People v. Harris (1975) 15 Cal.3d 384, 390 [“A detention of an individual which is reasonable at its inception may exceed constitutional bounds when extended beyond what is reasonably necessary under the circumstances.”]; People v. Bell (1996) 43 Cal.App.4th 754, 760. 9th CIR: Gallegos v. Los Angeles (9th Cir. 2002) 308 F.3d 987, 991 [“We must consider all the circumstances surrounding the encounter between the individual and the police, by evaluating not only how intrusive the stop was, but also whether the methods used by police were reasonable given the specific circumstances.”]; U.S. v. Chavez-Valenzuela (9th Cir. 2001) 268 F.3d 719, 723. OTHER FED: U.S. v. Campbell (5th Cir. 1999) 178 F.3d 345, 348-9 [“In the course of [their] investigation, the officers had two goals: to investigate and to protect themselves during their investigation.”]; U.S. v. Holt (10th Cir. 2001) 264 F.3d 1215, 1230 [reasonableness of a traffic stop depends on both “the length of the detention and the manner in which it is carried out.”].


9 OTHER FED: U.S. v. Stewart (7th Cir. 2004) 388 F.3d 1079, 1084 [“The fault line between an investigative detention and an arrest is flexible and highly fact-intensive . . . [T]here is no litmus-paper test for determining when a seizure exceeds the bounds of an investigative stop and becomes an arrest.”].

10 QUOTE FROM: United States v. Sharpe (1985) 470 U.S. 675, 686-7. 9th CIR: U.S. v. Meza-Corrales (9th Cir. 1999) 183 F.3d 1116, 1123 [“When we make such judgments, common sense and ordinary human experience rather than bright-line rules serve as our guide, and we recognize that the police may not be so aggressive in their conduct without deeming it an arrest in those circumstances when it is a reasonable response to legitimate safety concerns on the part of the investigating officers.”]. OTHER FED: U.S. v. Childs (7th Cir. 2002) 277 F.3d 947, 953 [“The reasonableness of a seizure depends on what the police do, not on what they might have done.”].

any ‘least intrusive means’ test for commencing or conducting an investigative stop. The question is not simply whether some other alternative was available, but whether the police acted unreasonably in failing to recognize or pursue it.”].

9th CIR: Redding v. Safford Unified School Dist. (9th Cir. 2007) __ F.3d __ [2007 WL 2743594] [“The Supreme Court has repeatedly held that ‘reasonablelessness’ under the Fourth Amendment does not require adherence to the least intrusive means.”].

OTHER FED: U.S. v. Brigham (5th Cir. en banc 2004) 382 F.3d 500, 511 [“Least intrusive means test” is “contrary to express statements of the Supreme Court”].

13 USSC: Florida v. Royer (1983) 460 U.S. 491, 500 [“An investigative detention must be temporary and last no longer than is necessary to effectuate the purpose of the stop.”; United States v. Sharpe (1985) 470 U.S. 675, 686 [“In assessing whether a detention is too long in duration to be justified as an investigative stop, we consider it appropriate to examine whether the police diligently pursued a means of investigation that was likely to confirm or dispel their suspicions quickly.”]; United States v. Place (1983) 462 U.S. 696, 709 [“In assessing the effect of the length of the detention, we take into account whether the police diligently pursue their investigation.”]; Michigan v. Summers (1981) 452 U.S. 692, 700, fn.12 [questioning may become unreasonable if it “makes the period of detention unduly long.”]; Illinois v. Caballes (2005) 543 U.S. 405, 407 [“A seizure that is justified solely by the interest in issuing a warning ticket to the driver can become unlawful if it is prolonged beyond the time reasonably required to complete that mission.”].

CAL: People v. Lacey (1973) 30 Cal.App.3d 170, 176 [“Although an investigation cannot be instantaneously accomplished, neither can it be prolonged indefinitely.”]; People v. Soun (1995) 34 Cal.App.4th 1499, 1520 [30 minute detention OK because the investigating officer “fully accounted for this period of time.”]; Ingle v. Superior Court (1982) 129 Cal.App.3d 188, 196 [“Each step in the investigation conducted by [the officers] proceeded logically and immediately from the previous one.”]; People v. Bell (1996) 43 Cal.App.4th 754, 761; People v. Harris (1975) 15 Cal.3d 384, 390 [“A detention of an individual which is reasonable in its inception may exceed constitutional bounds when extended beyond which is reasonably necessary under the circumstances.”]; People v. Carlos M. (1990) 220 Cal.App.3d 372, 382, fn.4 [“Here, nothing suggests [the officer] dallied.”]; People v. Bowen (1987) 195 Cal.App.3d 269; Venegas v. County of Los Angeles (2002) 105 Cal.App.4th 636, 653 [“When an officer makes such a traffic stop, the stop may last only as long as is reasonably necessary to perform the duties incurred by virtue of the stop.”]; People v. Bello (1975) 45 Cal.App.3d 970, 973; People v. Grace (1973) 32 Cal.App.3d 447, 451; Pendergraft v. Superior Court (1971) 15 Cal.App.3d 237, 242. 9th CIR: U.S. v. Meza-Corrales (9th Cir. 1999) 183 F.3d 1116, 1123; Allen v. Los Angeles (9th Cir. 1995) 66 F.3d 1052 [24-minute detention while officers contacted car owner to determine if car stolen]; Gallegos v. Los Angeles (9th Cir. 2002) 308 F.3d 987, 992 [“Gallegos makes much of the fact that his detention lasted forty-five minutes to an hour. . . . While the length of Gallegos’ detention remains relevant, more important is that [the officers’] actions did not involve any delay unnecessary to their legitimate investigation. Critical to our conclusion that Gallegos was not arrested is that the officers diligently pursued a means of investigation that was likely to confirm or dispel their suspicions quickly.”].

OTHER FED: U.S. v. Shabazz (5th Cir. 1993) 993 F.2d 431, 437 [“A detention may be of excessively long duration even though the officers have not completed and continue to pursue investigation of the matters justifying its initiation.”]; Courson v. McMillan (11th Cir. 1991) 939 F.2d 1479, 1492 [30-minute detention not unreasonable]; U.S. v. Campbell (5th Cir. 1999) 178 F.3d 345, 350 [10-25 minute detention of bank robbery suspect was “not an unreasonable amount of time under the circumstances”; U.S. v. Childs (7th Cir. 2002) 277 F.3d 947, 952 [“A person stopped on reasonable suspicion must be released as soon as the officers have assured themselves that no skullduggery is afoot.”]; U.S. v. McSwain (10th Cir. 1994) 29 F.3d 558, 561; U.S. v. Hill (6th Cir. 1999) 195 F.3d 258, 264 [“Once the purpose of the traffic stop is completed, a motorist cannot be further detained unless something that occurred during the stop caused the officer to have a reasonable and articulable suspicion that criminal activity was afoot.”].

14 USSC: United States v. De Hernandez (1985) 473 U.S. 531, 543 [“[C]ommon sense and ordinary human experience must govern over rigid [time] criteria.”]; CAL: People v. Gomez (2004) 117 Cal.App.4th 531, 537 [“There is no fixed time for establishing the constitutionality of an investigatory detention. Rather, such a detention will be deemed unconstitutional when extended beyond what is reasonably necessary under the circumstances that made its initiation permissible.”]; People v. Gorak (1987) 196 Cal.App.3d 1032, 1037 [“The United States Supreme Court has refused to adopt any outside time limitation on a lawful detention.”]; People v. Dasilva (1989) 207 Cal.App.3d 43, 50 [“There is no rigid time limitation imposed on a detention. The court must determine the purpose of the stop as well as the time reasonably needed to effectuate the purpose.”]; People v. Guallardo (2005) 130 Cal.App.4th 234, 238 [“There is no hard and fast limit as to the amount of time that is reasonable, rather, it depends on the circumstances of each case.”].

9th CIR: U.S. v. Torres-Sanchez (9th Cir. 1996) 83 F.3d 1123, 1129 [“Brevity can only be defined in the context of each particular case.”]; Ganwich v. Knapp (9th Cir. 2003) 319 F.3d 1115 [detention 2-5 hours unlawful].

OTHER FED: U.S. v. $404,905 (8th Cir. 1999) 182 F.3d 643, 648 [“Given the myriad situations in which traffic stops occur, it is not reasonable to subject them to the length-of-detention analysis we use in evaluating investigatory stops.” Court ruled an extension of a traffic stop for two minutes after it should have been completed was de minimis].

BUT ALSO SEE United States v. Sharpe (1985) 470 U.S. 675, 685 [“Obviously, if an investigative stop continues indefinitely, at some point it can no longer be justified as an investigative stop.”].

15 USSC: United States v. Sharpe (1985) 470 U.S. 675, 687-8 [“The delay in this case was attributable almost entirely to the evasive actions of [a second suspect], who sought to elude the police”]; United States v. Montoya De
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9th CIR: U.S. v. Mayo (9th Cir. 2005) 394 F.3d 1271, 1276 ["The period of detention was permissibly extended because new grounds for suspicion of criminal activity continued to unfold."]

17 CAL: People v. Bello (1975) 45 Cal.App.3d 970, 973; People v. Grace (1973) 32 Cal.App.3d 447, 452 ["When [the officer] learned his initial reason for stopping Grace had no basis in fact, his business with him was concluded."];


9th CIR: U.S. v. Washington (9th Cir. 2004) 387 F.3d 1060, 1070 [after completing their duties, officers persisted in obtaining the suspect's consent to search his room]. OTHER FED: U.S. v. Sullivan (4th Cir. 1998) 138 F.3d 126, 131 ["When the purpose justifying the stop is exceeded, the detention becomes illegal unless a reasonable suspicion of some other crime exists."];

U.S. v. Childs (7th Cir. 2002) 277 F.3d 947, 952 ["A person stopped on reasonable suspicion must be released as soon as the officers have assured themselves that no skulduggery is afoot."];

U.S. v. Shabazz (5th Cir. 1993) 993 F.2d 431, 436 ["When the officer is satisfied that the individual is not carrying a gun, the officer may not detain him longer to investigate a charge lacking reasonable suspicion."];

U.S. v. McSwain (10th Cir. 1994) 29 F.3d 558, 561; U.S. v. Hill (6th Cir. 1999) 195 F.3d 258, 264 ["Once the purpose of the traffic stop is completed, a motorist cannot be further detained unless something that occurred during the stop causes the officer to have a reasonable and articulable suspicion that criminal activity was afoot."]

18 USCC: Muehler v. Mena (2005) 544 U.S. 93, 99 ["Inherent in Summers’ authorization to detain an occupant of the place to be searched is the authority to use reasonable force to effectuate the detention."];

Graham v. Connor (1989) 490 U.S. 386, 396 ["[T]he right to make an arrest or investigatory stop necessarily carries with it the right to use some degree of physical coercion or threat thereof to effect it."];

CAL: People v. Rivera (1992) 8 Cal.App.4th 1000, 1007-8; People v. Johnson (1991) 231 Cal.App.3d 1, 14 ["If suspects could convert detentions into arrests by their own flight or violence, sophisticated or simply violence-prone suspects might never be detained on less than probable cause, an absurd result."];

People v. Taylor (1986) 178 Cal.App.3d 217, 227, fn.7 ["The weight of recent authority holds that police officers have a right to use force, including the blocking of a vehicle and the display of a weapon, to accomplish an otherwise lawful investigatory stop or detention provided the force is reasonable in the circumstances to protect the officers or members of the public."];

People v. Joseph F. (2000) 85 Cal.App.4th 975, 989 ["The reasonableness of a particular use of force is judged from the perspective of a reasonable officer on the scene, not by the 20/20 vision of hindsight."];

People v. Brown (1985) 169 Cal.App.3d 159, 166-7; People v. Gregory S. (1980) 112 Cal.App.3d 764, 778 ["It is implicit in a lawful detention that the person detained is not free to leave at will and may be kept in the officer's presence by physical restraint, threat of force or assertion of authority."].

9th CIR: Meredith v. Erath (9th Cir. 2003) 342 F.3d 1057. OTHER FED: Burchett v. Kiefer (6th Cir. 2002) 310 F.3d 937, 944; U.S. v. Dykes (D.C. Cir. 2005) 406 F.3d 717, 720 ["[B]ecause Dykes was in full flight from officers who were justified in stopping him, tackling him was a reasonable method of effectuating the stop."]

NOTE: When a detainee resists a lawful detention it would probably be immaterial that the encounter had become a de facto arrest because he was likely be arrestable for resisting or obstructing an officer. Pen. Code § 148(a); People v. Johnson (1991) 231 Cal.App.3d 1, 13, fn.2; People v. Allen (1980) 109 Cal.App.3d 981; U.S. v. Campbell (5th Cir. 1999) 178 F.3d 345.


9th CIR: U.S. v. $109,179 (9th Cir. 2000) 228 F.3d 1080, 1084 ["A brief but complete restriction of liberty, if not excessive under the circumstances, is permissible during a Terry stop and does not necessarily convert the stop into an arrest."];

U.S. v. Meza-Corrales (9th Cir. 1999) 183 F.3d 1116, 1123 ["[W]e allow intrusive and aggressive police conduct without deeming its arrest in those circumstances when it is a reasonable response to legitimate safety concerns on the part of the investigating officers. Conversely, a de facto arrest may result if the
restraint employed by the police goes beyond that which is reasonably necessary for a detention.”]; U.S. v. Del Vizo (9th Cir. 1990) 918 F.2d 821, 825 [“[A]n investigatory stop will not be converted into an arrest simply when the officers take reasonable measures to neutralize the risk of physical harm and to determine whether the person in question is armed.”]. ALSO SEE U.S. v. Retty (9th Cir. 2000) 224 F.3d 986, 993 [“It is a difficult exercise at best to predict a criminal suspect’s next move”]. NOTE: Why traffic stops are dangerous: Although most traffic violators don’t present any danger to officers, as the court noted in U.S. v. Holt (10th Cir. 2001) 264 F.3d 1215. 1223 the “terrifying truth” is that “officers face a very real risk of being assaulted with a dangerous weapon each time they stop a vehicle. The officer typically has to leave his vehicle, thereby exposing himself to potential assault by the motorist. The officer approaches the vehicle not knowing who the motorist is or what the motorist’s intentions might be.”


23 USSC: Muehler v. Mena (2005) 544 U.S. 93, 100 [“In such inherently dangerous situations, the use of handcuffs minimizes the risk of harm to both officers and occupants.”]. CAL: People v. Celis (2004) 33 Cal.4th 667, 676 [handcuffing “did not turn defendant’s investigative detention into an arrest”]; People v. Carlos M. (1990) 220 Cal.App.3d 372, 385 [“The fact that a defendant is handcuffed while being detained does not, by itself, transform a detention into an arrest. Instead, the issue is whether the restraint employed exceeded that which was reasonably necessary for the detention.”]; People v. Soun (1995) 34 Cal.App.4th 1499, 1517 [OK to handcuff suspects in a robbery-murder]; People v. Brown (1985) 169 Cal.App.3d 159, 166 [circumstances justified throwing a bank robbery suspect to the ground and handcuffing him]; People v. Bowen (1987) 195 Cal.App.3d 269, 274 [“The fact that appellant [a suspect in a purse snatch] was handcuffed while detained awaiting the victim’s arrival does not mean that appellant was under arrest during this time.”]; People v. Johnson (1991) 231 Cal.App.3d 1, 14 [“[D]efendant struggled violently with the officers for five minutes. The need for handcuffing was patently justified by concern for officer safety.”]; Venegas v. County of Los Angeles (2002) 105 Cal.App.4th 636, 655 [“Because Venegas admitted that he was hostile when approached by the officers, the officers’ handcuffing of him may have been initially justified by the need of a reasonably prudent officer to protect himself and others during the time that a traffic stop was permissible.”].

9th CIR: Haynie v. County of Los Angeles (9th Cir. 2003) 339 F.3d 1071; U.S. v. Hernandez (9th Cir. 2003) 322 F.3d 592, 597. OTHER FED: U.S. v. Aitchley (6th Cir. 2007) 474 F.3d 840, 849; U.S. v. Stewart (7th Cir. 2004) 388 F.3d 1079, 1084 [“The permissible scope of a Terry stop has expanded in recent years to include the use of handcuffs”]. NOTE: Combative detainees (arrest for § 148): Physical resistance to a detention will ordinarily justify an arrest for resisting, delaying, or obstructing an officer in the performance of his or her duties. Pen. Code § 148; People v. Johnson (1991) 231 Cal.App.3d 1, 13, fn. 2 [“Given their right to forcibly detain, California precedent arguably would have allowed the officers to arrest for flight which unlawfully delayed the performance of their duties.”].

24 9th CIR: Meredith v. Erath (9th Cir. 2003) 342 F.3d 1057. OTHER FED: Burchett v. Kiefer (6th Cir. 2002) 310 F.3d 937 945 [“The record gives no indication that [the defendant] had previously complained or advised the officers that the handcuffs were too tight.”].

25 USSC: Muehler v. Mena (2005) 544 U.S. 93, 100 [“[T]he 2- to 3-hour detention in handcuffs in this case does not outweigh the government’s continuing safety interests.”]. 9th CIR: U.S. v. Bravo (9th Cir. 2002) 295 F.3d 1002 [suspect was notified the handcuffs were temporary and for his safety and safety of officers].