

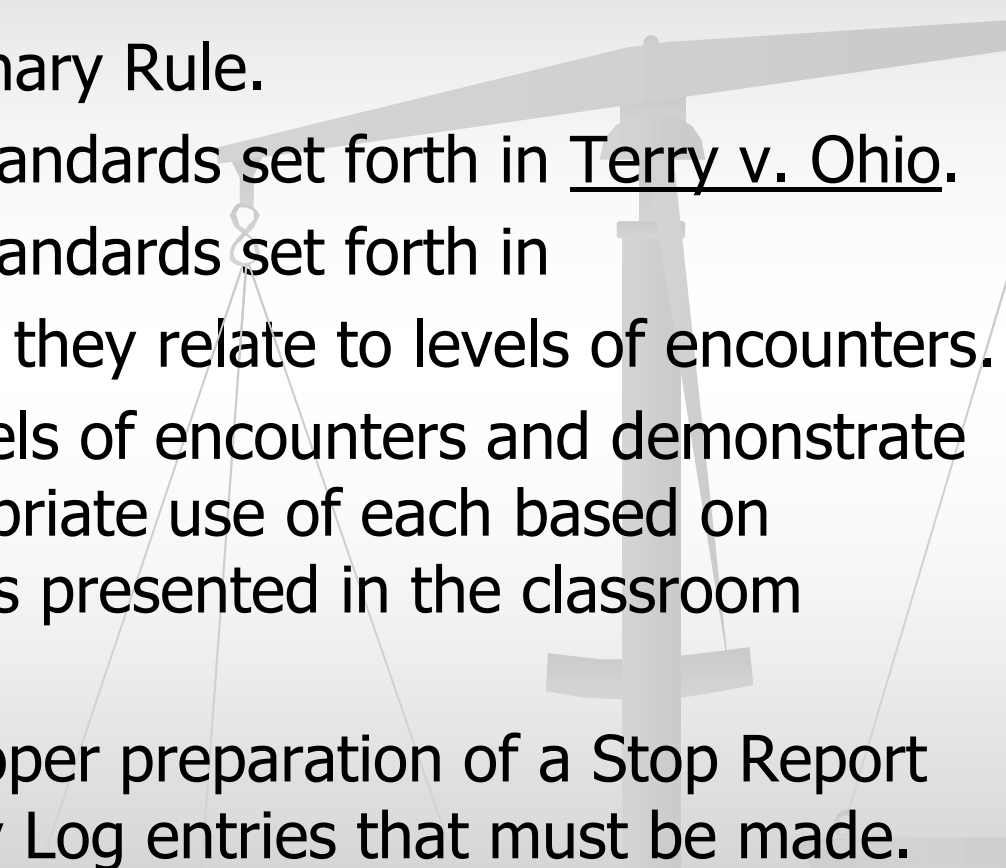
# Attachment 2

# **INVESTIGATIVE ENCOUNTERS**



## **POLICING LEGALLY**

# LEARNING OUTCOMES

1. Explain the 4<sup>th</sup> Amendment prohibition against unreasonable search and seizure.
  2. Explain the Exclusionary Rule.
  3. Describe the legal standards set forth in Terry v. Ohio.
  4. Describe the legal standards set forth in People v. DeBour as they relate to levels of encounters.
  5. Identify the four levels of encounters and demonstrate the limits and appropriate use of each based on different sets of facts presented in the classroom setting.
  6. Demonstrate the proper preparation of a Stop Report and required Activity Log entries that must be made.
- 

# CONSTITUTIONAL CONSIDERATIONS

## 4<sup>TH</sup> AMENDMENT:

**PROTECTS CITIZENS AGAINST  
UNREASONABLE GOVERNMENTAL  
SEARCHES AND SEIZURES**

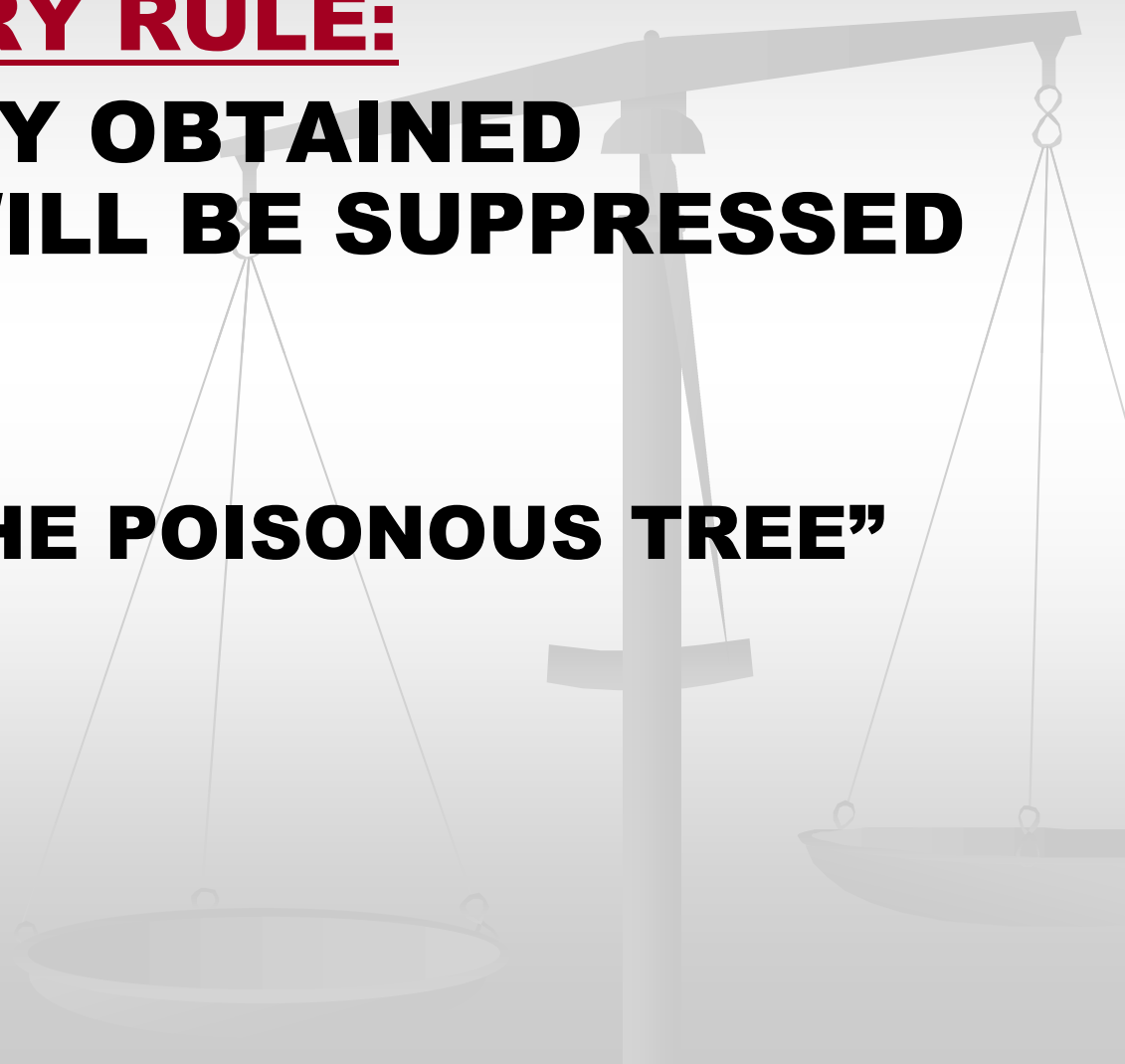


# CONSTITUTIONAL CONSIDERATIONS

## EXCLUSIONARY RULE:

**UNLAWFULLY OBTAINED  
EVIDENCE WILL BE SUPPRESSED  
IN COURT**

**“FRUITS OF THE POISONOUS TREE”**



# **TERRY v. OHIO**

**A *TERRY* STOP IS AN ENCOUNTER WITH AN OFFICER WHERE A REASONABLE PERSON WOULD NOT FEEL FREE TO WALK AWAY.**

**IT IS A SEIZURE UNDER THE FOURTH AMENDMENT  
REQUIRES REASONABLE SUSPICION**

**REASONABLE SUSPICION IS LESS THAN PROBABLE CAUSE, BUT MUST BE INDIVIDUALIZED SUSPICION BASED ON SPECIFIC FACTS**

**MAY FRISK FOR WEAPONS ONLY IF OFFICER REASONABLY SUSPECTS THAT THE PERSON STOPPED IS ARMED AND DANGEROUS**

# PEOPLE v. DeBOUR

**NYS COURT OF APPEALS CREATED A FOUR TIER ANALYSIS THAT DICTATES LIMITS ON THE LEVELS OF PERMISSIBLE POLICE INTRUSION...**

**LEVEL 1: REQUEST FOR INFORMATION**

**LEVEL 2: COMMON LAW RIGHT OF INQUIRY**

**LEVEL 3: *TERRY STOP***

**LEVEL 4: ARREST**

**LEVEL 1:**  
**REQUEST FOR INFORMATION**

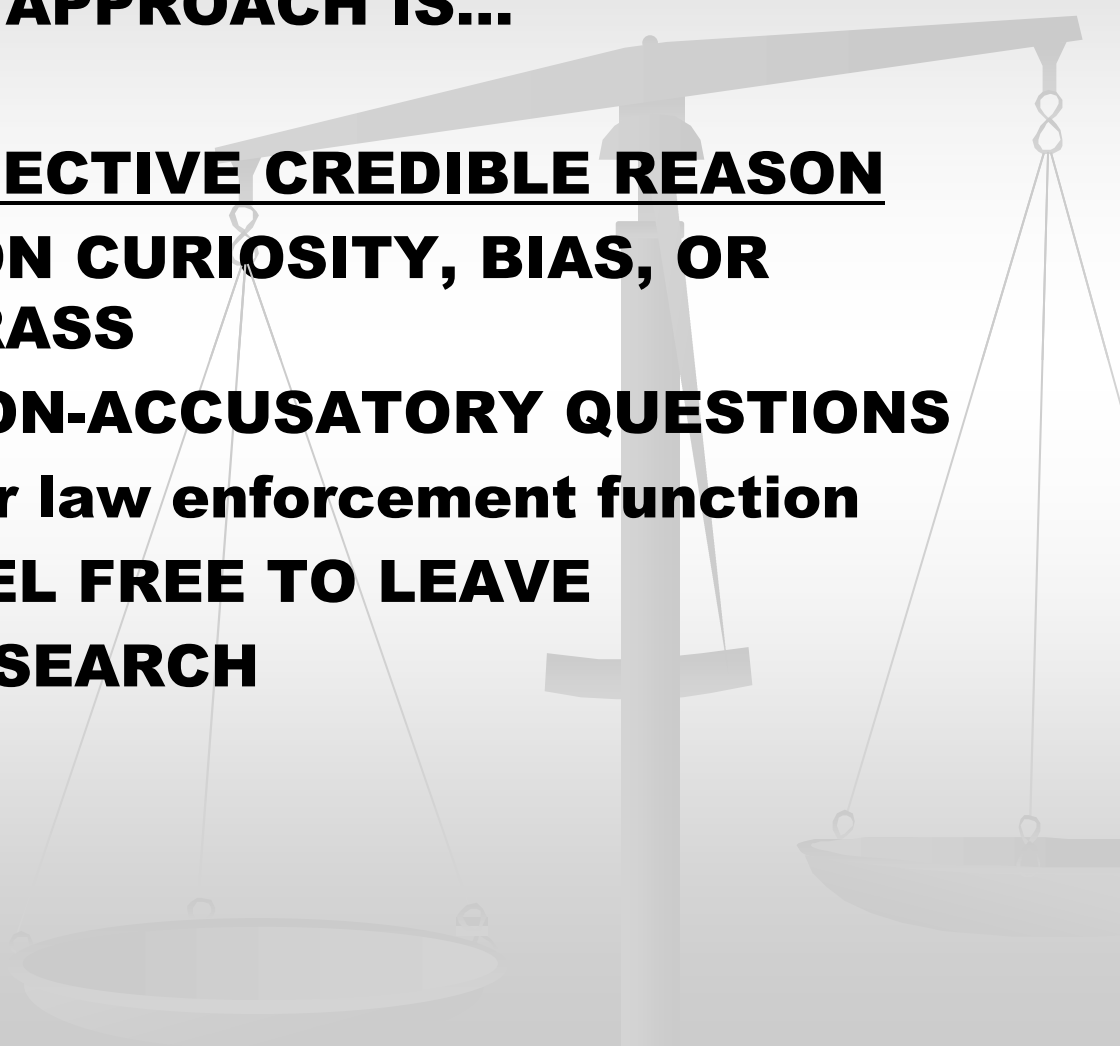
**MAY A POLICE OFFICER APPROACH A  
CITIZEN TO REQUEST INFORMATION  
WITHOUT HAVING ANY INDICATION  
OF CRIMINAL ACTIVITY?**



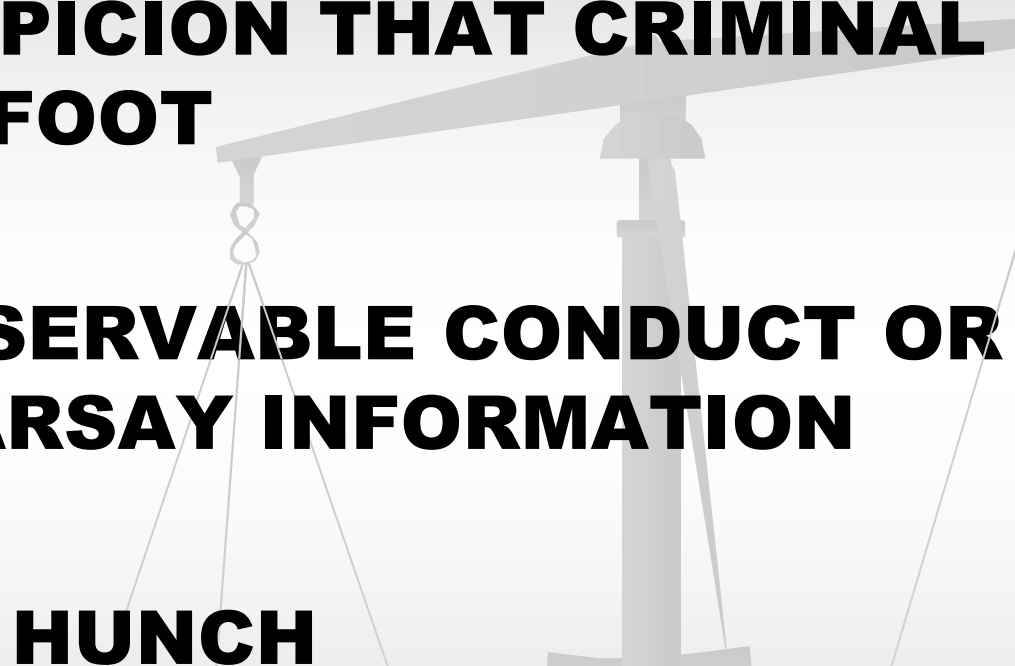


# **LEVEL 1:** **REQUEST FOR INFORMATION**

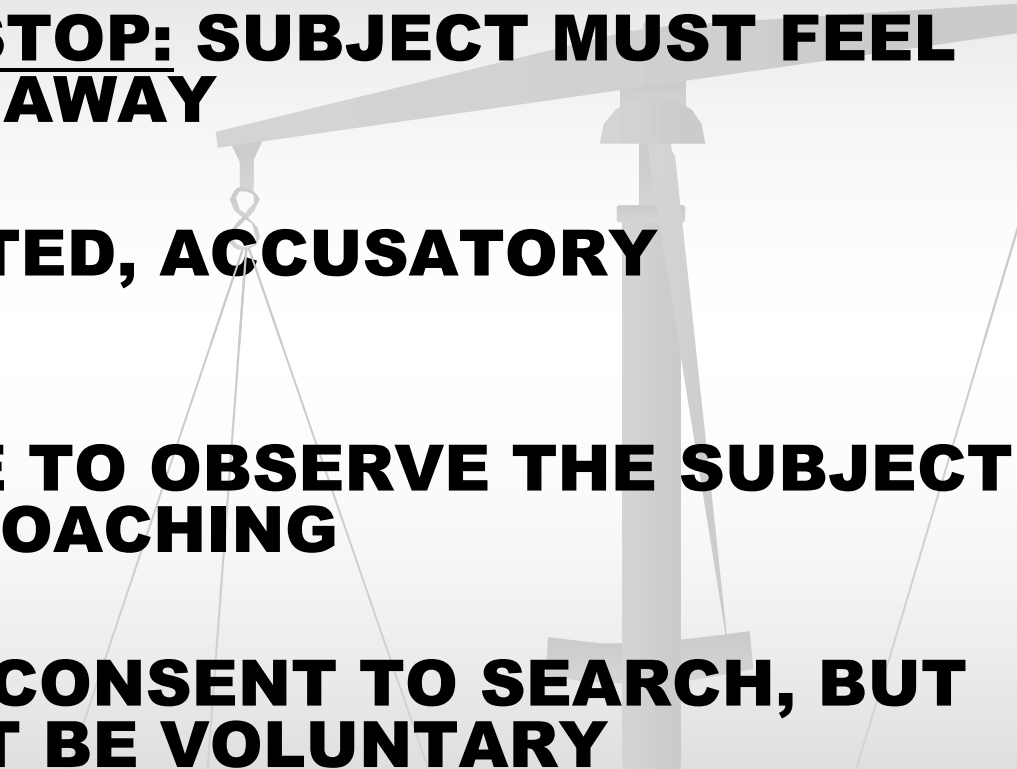
**YES, PROVIDED THE APPROACH IS...**

- **BASED ON AN OBJECTIVE CREDIBLE REASON**
  - **AND NOT BASED ON CURIOSITY, BIAS, OR INTENDED TO HARASS**
  - **MAY ONLY ASK NON-ACCUSATORY QUESTIONS**
    - **Public service or law enforcement function**
  - **PERSON MUST FEEL FREE TO LEAVE**
  - **MAY NOT ASK TO SEARCH**
- 

## **LEVEL 2:** **COMMON LAW RIGHT OF INQUIRY**

- **FOUNDED SUSPICION THAT CRIMINAL ACTIVITY IS AFOOT**
  - **BASED ON OBSERVABLE CONDUCT OR RELIABLE HEARSAY INFORMATION**
  - **MORE THAN A HUNCH**
- 

## **LEVEL 2:** **COMMON LAW RIGHT OF INQUIRY**

- **CANNOT BE A STOP: SUBJECT MUST FEEL FREE TO WALK AWAY**
  - **MAY ASK POINTED, ACCUSATORY QUESTIONS**
  - **MAY CONTINUE TO OBSERVE THE SUBJECT WITHOUT APPROACHING**
  - **MAY REQUEST CONSENT TO SEARCH, BUT CONSENT MUST BE VOLUNTARY**
- 

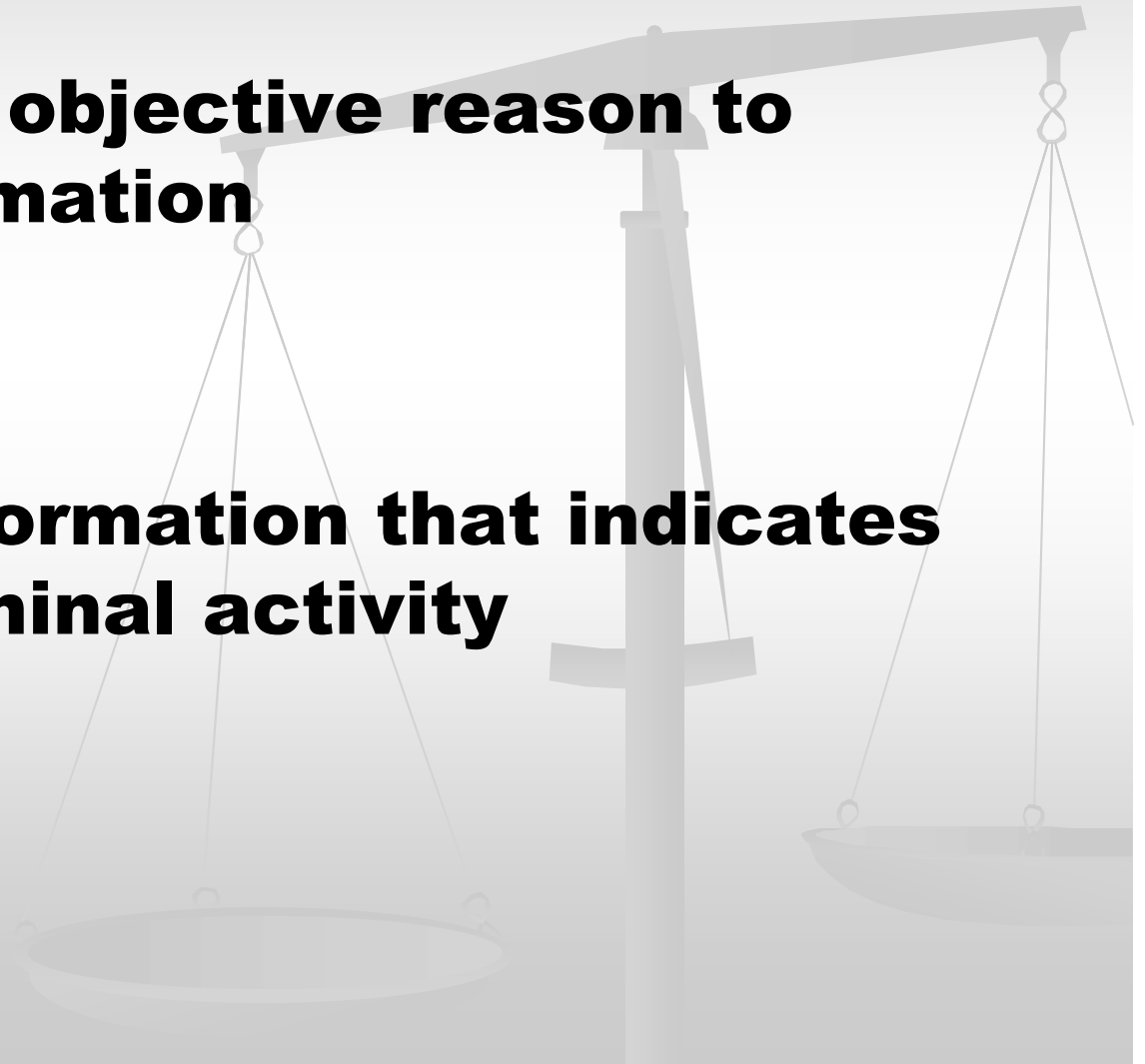
## **LEVEL 1 vs. LEVEL 2**

- **LEVEL 1**

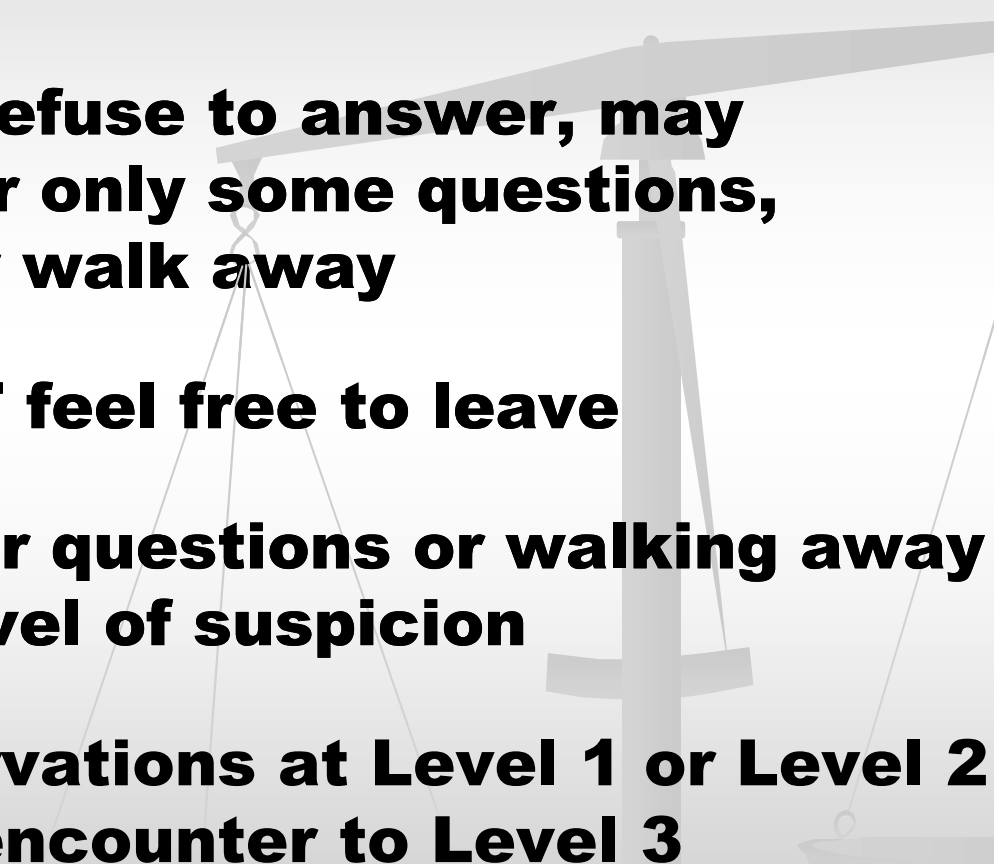
**You have an objective reason to ask for information**

- **LEVEL 2**

**You have information that indicates possible criminal activity**



## **LEVEL 1 and LEVEL 2**

- **CANNOT use or threaten to use any level of force**
  - **Individuals may refuse to answer, may choose to answer only some questions, and/or may freely walk away**
  - **Individuals MUST feel free to leave**
  - **Refusal to answer questions or walking away does not raise level of suspicion**
  - **Events and observations at Level 1 or Level 2 can elevate the encounter to Level 3**
- 

## **LEVEL 3:**

### **Also Known as *TERRY STOP***

**WHENEVER A REASONABLE PERSON  
WOULD NOT FEEL FREE TO DISREGARD  
THE OFFICER AND WALK AWAY...  
THAT IS A STOP**

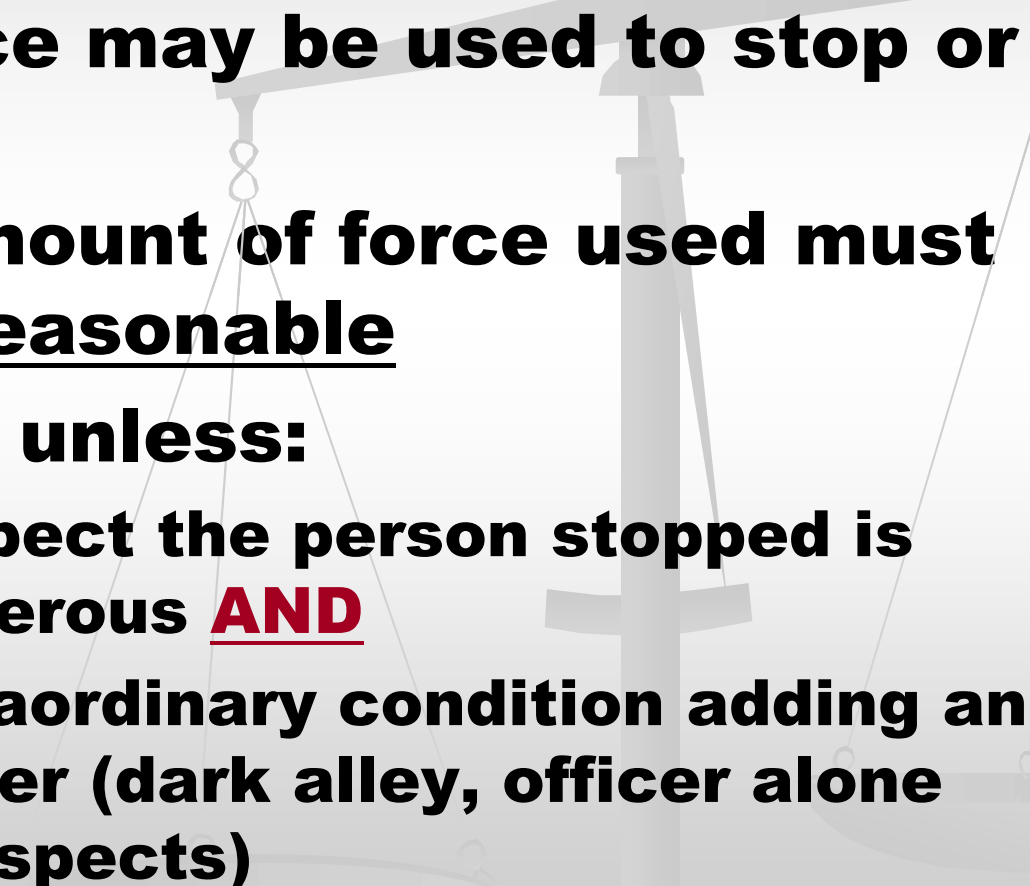
- **Physical force or threat of force is not necessary to constitute a stop**
- **If commands or questions would lead a reasonable person to conclude she/he is NOT free to leave, it is a stop**

**Where can you stop the person?**

- **Within Geographic Area Of Employment (Five Boroughs) on or off duty**

## **LEVEL 3 STOP**

### **USE OF FORCE:**

- **Reasonable force may be used to stop or detain**
  - **The type and amount of force used must be objectively reasonable**
  - **Do not handcuff unless:**
    - **Reasonably suspect the person stopped is armed and dangerous AND**
    - **There is an extraordinary condition adding an element of danger (dark alley, officer alone with multiple suspects)**
- 

## **LEVEL 3 STOP**

**A stop is permissible *only* when individualized reasonable suspicion exists that the person stopped has committed, is committing or is about to commit:**

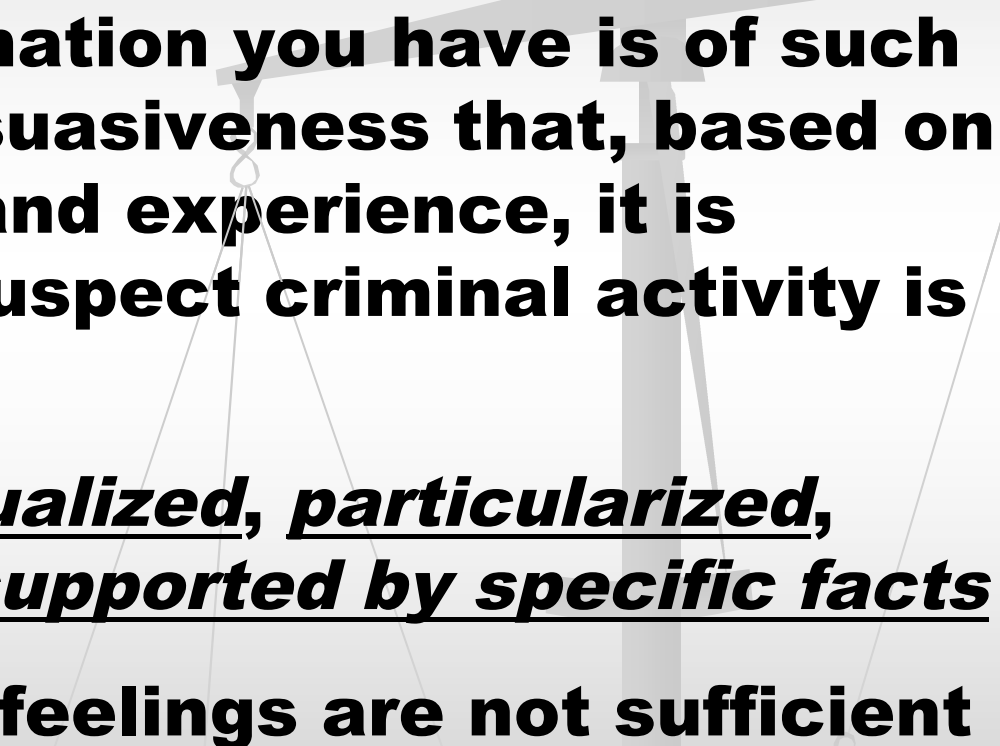
- **A felony or**
- **A Penal Law misdemeanor**

**Officer must be able to articulate specific facts justifying stop**



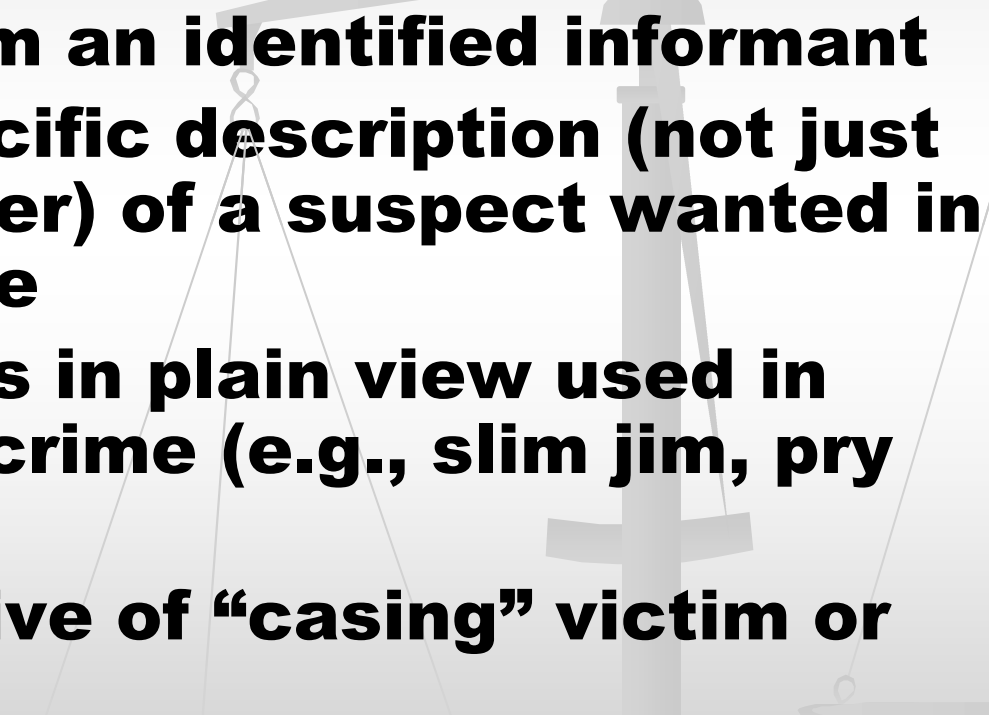
## **LEVEL 3 STOP**

### **WHAT IS REASONABLE SUSPICION?**

- **When the information you have is of such weight and persuasiveness that, based on your judgment and experience, it is reasonable to suspect criminal activity is afoot**
  - **Must be individualized, particularized, objective, and supported by specific facts**
  - **Hunches or gut feelings are not sufficient**
- 


## **LEVEL 3 STOP**

### **SOME FACTORS THAT MAY BE RELEVANT TO REASONABLE SUSPICION:**

- **Information from an identified informant**
  - **Matching a specific description (not just race, age, gender) of a suspect wanted in a reported crime**
  - **Carrying objects in plain view used in commission of crime (e.g., slim jim, pry bar)**
  - **Actions indicative of “casing” victim or location**
- 

## **LEVEL 3 STOP**

### **SOME ADDITIONAL FACTORS THAT MAY BE RELEVANT TO REASONABLE SUSPICION:**

- **Actions indicative of acting as a lookout**
  - **Actions indicative of engaging in drug transaction**
  - **Actions indicative of concealing or possessing a weapon**
  - **Proximity to recent known crime scene location**
- 

## **LEVEL 3 STOP**

**THESE ARE ONLY FACTORS THAT *MAY* BE RELEVANT IN DETERMINING REASONABLE SUSPICION**

**ANY ONE FACTOR IN ISOLATION MAY NOT LEAD TO REASONABLE SUSPICION**

**A GENERIC CRIME SUSPECT DESCRIPTION, BY ITSELF, LIKE “YOUNG BLACK MALE” DOES NOT SUPPORT REASONABLE SUSPICION**

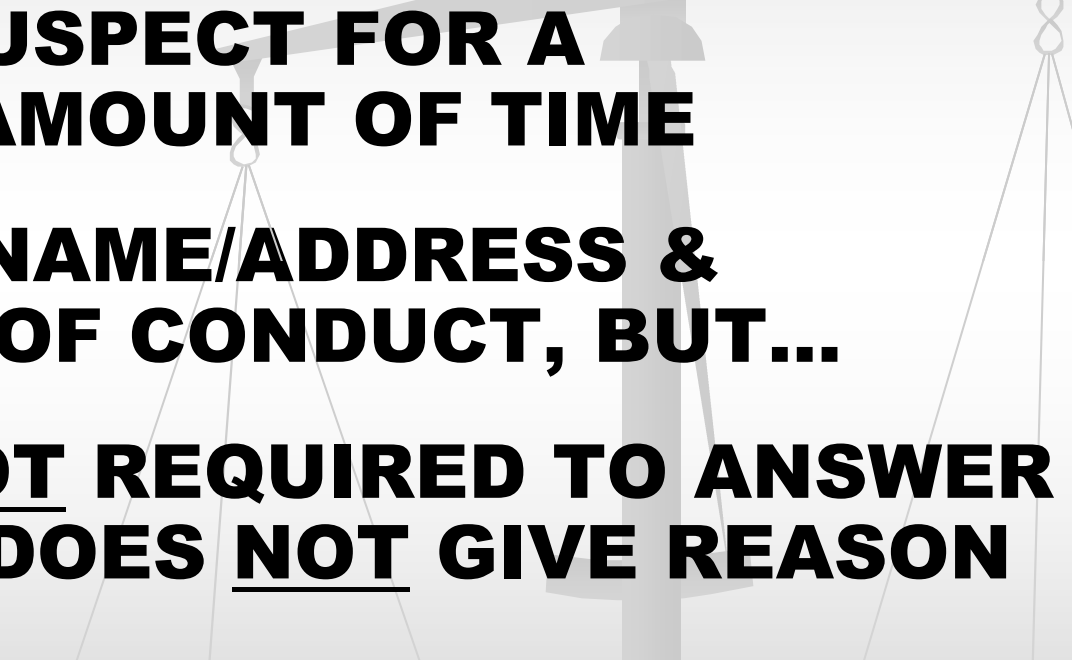
## **LEVEL 3 STOP**

### **INFORMATION FROM AN ANONYMOUS SOURCE:**

- **REASONABLE SUSPICION CANNOT BE BASED SOLELY ON ANONYMOUS INFORMATION**
  - **Except exigent circumstances, for example, bomb threats or DWI**
- **INFORMATION FROM ANONYMOUS SOURCE MUST BE CORROBORATED TO SUPPORT REASONABLE SUSPICION**
- **ANONYMOUS CALLER MAY SUPPORT LEVEL 2 “FOUNDED SUSPICION”**

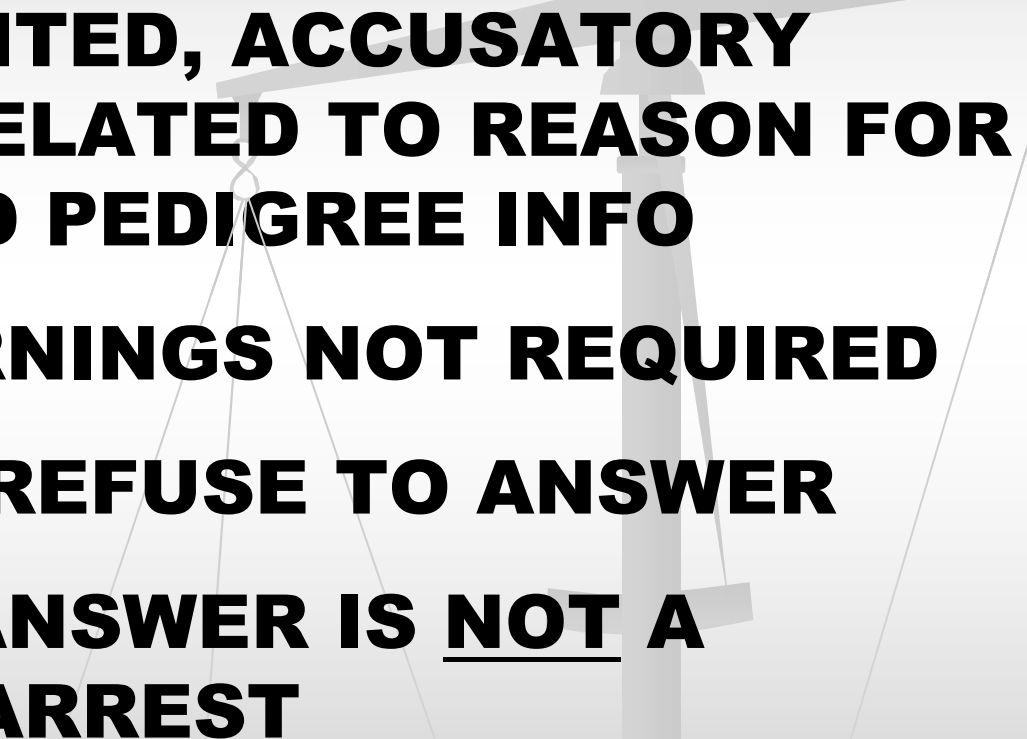
# LEVEL 3 STOP

## INTRUSION

- MAY DETAIN SUSPECT FOR A REASONABLE AMOUNT OF TIME
  - MAY ASK FOR NAME/ADDRESS & EXPLANATION OF CONDUCT, BUT...
  - SUSPECT IS NOT REQUIRED TO ANSWER AND REFUSAL DOES NOT GIVE REASON TO ARREST
- 

## **LEVEL 3 STOP**

### **QUESTIONING**

- **MAY ASK POINTED, ACCUSATORY QUESTIONS RELATED TO REASON FOR THE STOP AND PEDIGREE INFO**
  - **MIRANDA WARNINGS NOT REQUIRED**
  - **PERSON MAY REFUSE TO ANSWER**
  - **REFUSAL TO ANSWER IS NOT A REASON FOR ARREST**
- 

# LEVEL 3 STOP

## FRISK

**“STOP” AND “FRISK” ARE TWO  
DIFFERENT THINGS**

**CANNOT AUTOMATICALLY FRISK  
EVERYONE WHO IS LAWFULLY  
“STOPPED”**





## **LEVEL 3 STOP**

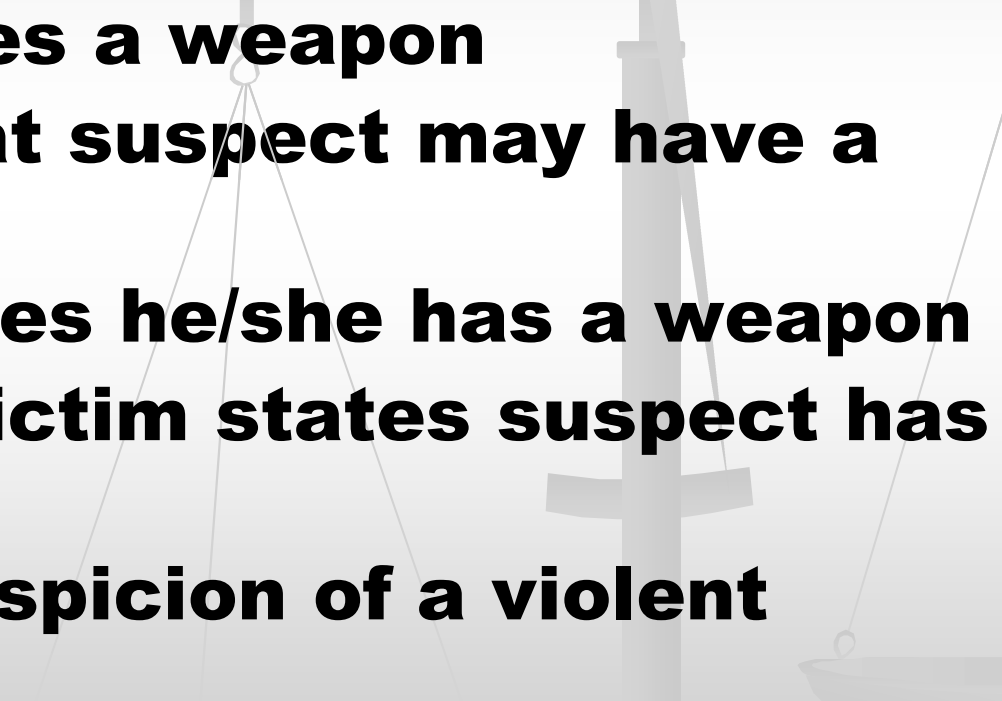
### **A FRISK**

#### **FRISK IS ONLY PERMITTED WHEN:**

- **There is independent reasonable suspicion that the person is armed and dangerous**
- **Limited pat down of the outside of suspect to check for dangerous weapons**
- **Cannot be used to search for evidence of a crime, such as drugs**
- **Cannot go inside of pockets or clothing during frisk**

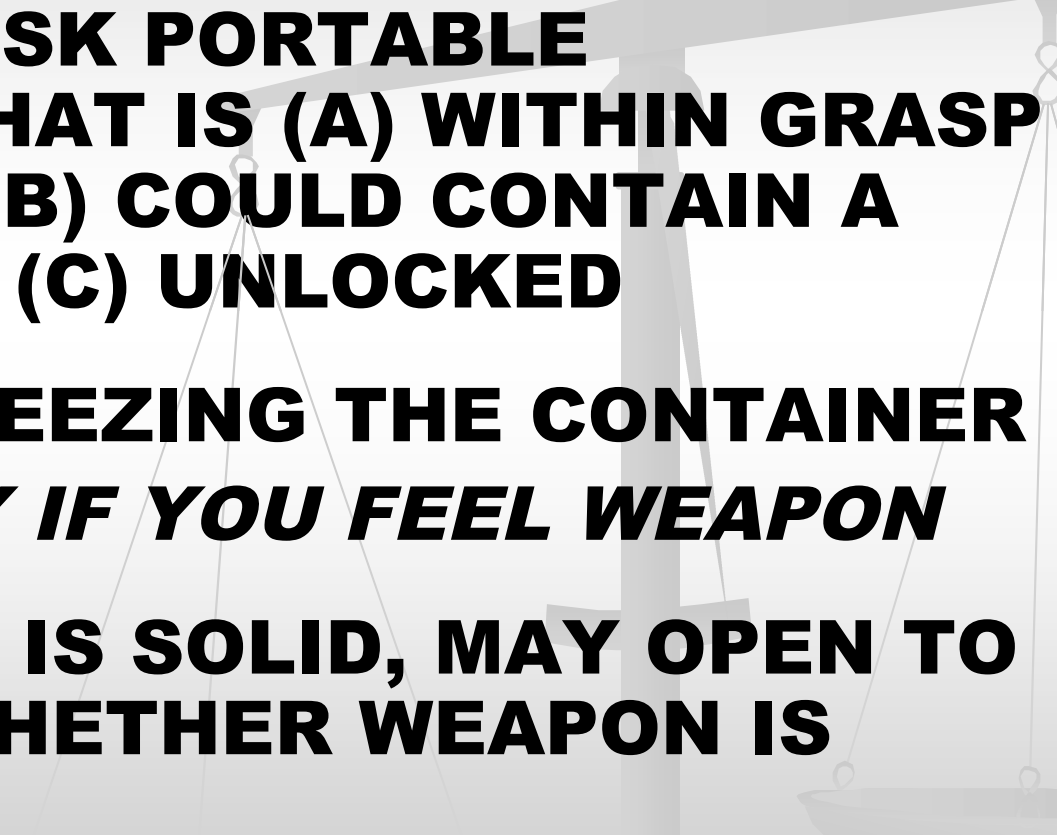
# **LEVEL 3 STOP**

## **ARMED AND DANGEROUS**

- **Officer observes a weapon**
  - **Knowledge that suspect may have a weapon**
    - **Suspect states he/she has a weapon**
    - **Witness or victim states suspect has a weapon**
  - **Reasonable suspicion of a violent crime**
- 

## **LEVEL 3 STOP**

### **FRISK OF A PORTABLE CONTAINER**

- **MAY ONLY FRISK PORTABLE CONTAINER THAT IS (A) WITHIN GRASP OF SUSPECT, (B) COULD CONTAIN A WEAPON, AND (C) UNLOCKED**
  - **FRISK BY SQUEEZING THE CONTAINER  
*OPEN ONLY IF YOU FEEL WEAPON***
  - **IF CONTAINER IS SOLID, MAY OPEN TO DETERMINE WHETHER WEAPON IS PRESENT**
- 

# **LEVEL 3 STOP**

## **SEARCH**

**A SEARCH IS THE PLACING OF HANDS INSIDE A POCKET OR OTHER INTERIOR PART OF CLOTHING OR POSSESSIONS**

**IT IS ONLY PERMITTED TO REMOVE OBJECT FELT DURING FRISK THAT YOU REASONABLY SUSPECT TO BE A WEAPON**

**PURPOSE IS FOR OFFICER SAFETY NOT TO DISCOVERY OTHER EVIDENCE OF CRIME**

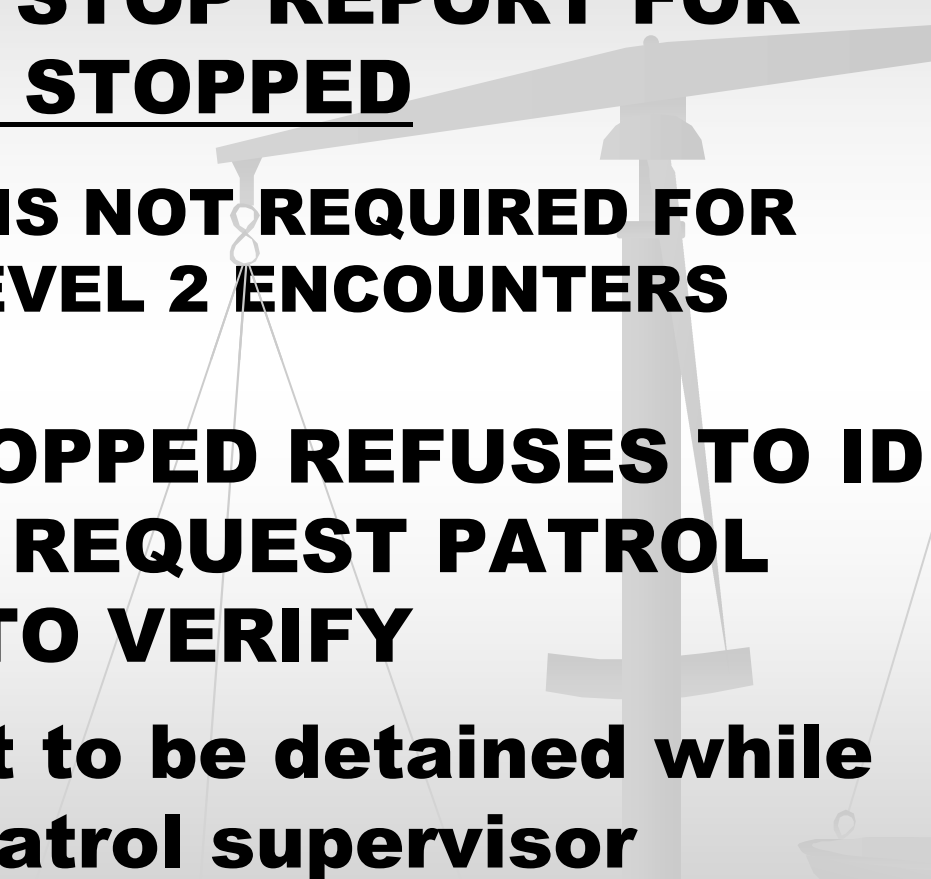
# **LEVEL 4:** **ARREST**

**ARREST REQUIRES PROBABLE CAUSE**

**PROBABLE CAUSE EXISTS WHEN FACTS AND CIRCUMSTANCES WOULD LEAD A REASONABLE PERSON TO BELIEVE:**

- **AN OFFENSE HAS BEEN COMMITTED**
- AND**
- **THE PERSON TO BE ARRESTED COMMITTED IT**

# STOP REPORT

- **PREPARE ONE STOP REPORT FOR EACH PERSON STOPPED**
    - **A Stop Report IS NOT REQUIRED FOR LEVEL 1 OR LEVEL 2 ENCOUNTERS**
  - **IF PERSON STOPPED REFUSES TO ID HIM/HERSELF, REQUEST PATROL SUPERVISOR TO VERIFY**
    - **Person is not to be detained while waiting for patrol supervisor**
- 

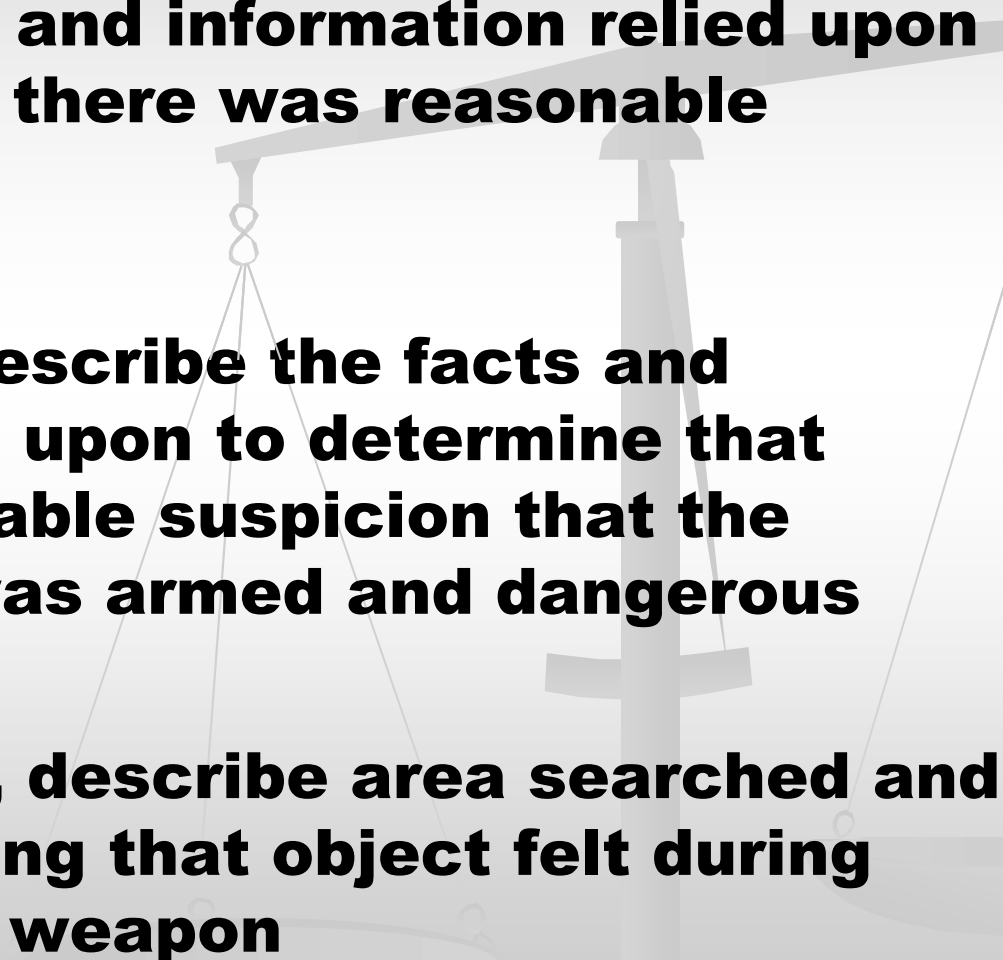
# **REQUIRED ACTIVITY LOG** **ENTRIES**

**DETAILED ACTIVITY LOG ENTRY MUST  
BE MADE FOR EACH PERSON STOPPED**

## **MUST INCLUDE:**

- **Pedigree**
- **Time, date, and location**
- **Suspected felony/penal law misdemeanor**
- **ICAD event number**
- **Detailed description of reasons for the stop/frisk/search**

# **REQUIRED ACTIVITY LOG** **ENTRIES**

- **Describe all facts and information relied upon to determine that there was reasonable suspicion AND**
  - **In case of frisk, describe the facts and information relied upon to determine that there was reasonable suspicion that the person stopped was armed and dangerous**
  - **In case of search, describe area searched and basis for suspecting that object felt during frisk resembled a weapon**
- 



# SUMMARY

1. Explain the 4<sup>th</sup> Amendment prohibition against unreasonable search and seizure.
  2. Explain the Exclusionary Rule.
  3. Describe the legal standards set forth in Terry v. Ohio.
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- 