Public Safety Approach: Reconciling Terry with Individual Rights, A

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A Public Safety Approach: Reconciling Terry with Individual Rights

Tiffany D. Corona*

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I. INTRODUCTION

You are standing on the sidewalk, in front of a store, with a couple of friends. As you stand there and talk, you look through the store window. While you continue to talk, one of your friends looks through the window, too. At that moment, a police officer approaches you, asks for your identification, and even frisks your person if you happen to be wearing baggy clothing. This type of situation is called an “investigative stop.” If the officer can point to specific and articulable facts which warrant the intrusion, then the stop is legal—at least since Terry v. Ohio.\(^1\)

Terry lowered the constitutional requirement of individualized suspicion for limited searches or seizures from probable cause to reasonable suspicion.\(^2\) While an officer must have “reasonably trustworthy information” to suspect that a person has committed or is committing a crime to establish probable cause,\(^3\) a police officer can form reasonable suspicion from mere “specific reasonable inferences.”\(^4\) The difference is that under reasonable suspicion, police need less justification to stop a person for investigative purposes.\(^5\) In the past, the Court protected individual rights by requiring officers to have a more solid basis for stopping a particular person,\(^6\) but Terry changed this by giving more deference to the suspicions of individual officers.\(^7\)

In addition to lowering the standard of individualized suspicion, Terry also dispensed with the historical warrant requirement approach to Fourth Amendment analysis for limited searches.\(^8\) Rather than giving preference to the individual’s rights, Terry analyzed the investigative stop from the police officer’s point of view.\(^9\) In so doing, Terry ushered in a new era of police-perspective rulings\(^10\) and departed from the protection-oriented jurisprudence of Katz v.

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1. 392 U.S. 1, 21 (1968).
3. Brinegar v. United States, 338 U.S. 160, 175-76 (1949) ("Probable cause exists where 'the facts and circumstances within [the 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." (quoting Carroll v. United States, 267 U.S. 132, 162 (1925))).
4. Terry, 392 U.S. at 27 (stating that search is reasonable if the officer can point to “specific reasonable inferences which he is entitled to draw from the facts in light of his experience.”).
5. Id. ("[T]here must be a narrowly drawn authority to permit a reasonable search for weapons for the protection of the police officer, where he has reason to believe that he is dealing with an armed and dangerous individual, regardless of whether he has probable cause to arrest the individual for a crime.").
7. Terry, 392 U.S. at 27.
8. Id.; Maclin, supra note 6, at 678-81.
9. Terry, 392 U.S. at 27; see also Maclin, supra note 6, at 678-81 (discussing how Terry transformed the Katz model of Fourth Amendment analysis).
10. Maclin, supra note 6, at 678.
United States and similar cases. In short, Terry reduced the importance of individual rights—both in the realm of Fourth Amendment analysis and in everyday life.

The Supreme Court announced the Terry decision in 1968 in a case involving a police officer’s investigative stop based on reasonable suspicion that petitioner was in the process of committing armed robbery, a felony. However, the Supreme Court did not explicitly address what other types of crime would be covered by the rule. Almost twenty years later, in United States v. Hensley, the Court applied the Terry doctrine to stops investigating completed felonies. And for more than twenty years after Hensley, courts have continually sought to resolve the issue of whether the Terry standard should apply in situations not contemplated by the Court in Terry, specifically in cases involving completed misdemeanor offenses. While four circuit courts and at least four state courts have ruled on this question, they offer little consistency as to how, or if, Terry should apply.

This Comment examines the possible approaches to this issue and suggests that the Court extend the Terry “reasonable articulable suspicion” standard of individualized suspicion only to those completed misdemeanors that implicate public safety. This suggested rule is consistent with the balancing test enunciated in Terry, while simultaneously affording proper Constitutional protections. This Comment posits that such a rule protects both the state interests articulated in Terry and the privacy interests of individuals embodied in the Fourth Amendment. It would also limit the lowered standard of individualized suspicion to only those cases in which a lower standard is absolutely necessary to protect public safety, giving proper deference to the warrant requirement of the Fourth Amendment.

Section II of this Comment analyzes the Terry decision and its aftermath. Section III evaluates the arguments against extending the Terry standard to all completed misdemeanors and explains why these approaches fall short of protecting the government’s interest in public safety. Section IV considers the arguments for extending Terry to all completed misdemeanors and examines why

11. Id. at 681.
12. Id.
13. Terry, 392 U.S. at 6, 30 (“[W]here 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.”).
these approaches are practically unworkable and fail to provide full protection for individual rights. Section V suggests a mixed approach to the extension of Terry and discusses possible ways of defining a “threat to public safety.”

II. THE TERRY CASE

In Terry, the Court introduced a new standard of individualized suspicion into the Fourth Amendment analysis for law enforcement investigations. Where previous cases required an officer to have probable cause to conduct a search or seizure, Terry allowed police officers to engage in more limited stops and frisks based only on a reasonable suspicion that criminal activity is “afoot” and that “the person with whom he is dealing may be armed and presently dangerous.”

In the decades since Terry, the Court has extended the Terry analysis to completed felonies, applying it in situations where crime may not necessarily be “afoot.”

A. The End of Probable Cause for “Limited” Intrusions

In Terry v. Ohio, a detective on patrol in downtown Cleveland observed two men in front of a store window on a street corner. The detective watched the men pace back and forth in front of the store window approximately twelve times, stopping to stare into the window and confer with one another after each stroll. The detective’s thirty-nine years of experience led him to believe that the men were “casing a job, a stick-up” and that they may have been armed and dangerous. Accordingly, the detective stopped the men to investigate the situation further. He asked the men for their names, ordered them into the store, removed one man’s overcoat, and patted down (or, in the Court’s words, “frisk[ed]”) the men’s outer clothing. Subsequently, the men were arrested for, and convicted of, carrying concealed weapons. On appeal, they challenged the reasonableness of the officer’s stop and frisk.

The Supreme Court held that an officer “must be able to point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion,” and as long as the officer could point to those facts, the search was reasonable under the Fourth Amendment. Under the
Fourth Amendment analysis previously used by the Court, the detective in Terry would have had to show probable cause, as well as a warrant or warrant exception, to detain the individuals and search them for weapons. While this standard still applies to full searches and seizures, Terry carved out an exception for more limited intrusions, such as the stop of a car or the frisk of an individual. Thus, Terry changed the Fourth Amendment framework for limited intrusions.

Since Terry, “stops” and “frisks”—as opposed to arrests and full searches and seizures—have been analyzed under the reasonableness clause, rather than the warrant clause, of the Fourth Amendment. Under the warrant clause, a search or seizure is constitutional only after a warrant is obtained through an affidavit supported by probable cause and issued by a neutral, detached magistrate. The judge must read that affidavit and agree that the police action is justified before the police officer is allowed to search or seize persons or their property. Before Terry, the reasonableness of police action was analyzed under this clause—if there was a properly issued warrant or a valid warrant exception, then the search or seizure was reasonable under the Fourth Amendment. Terry, however, divorced the requirement of a warrant or warrant exception from the goal of reasonableness and held that limited searches and seizures could be reasonable under the Constitution, even without the previously required warrant or warrant exception.

While not overruling the warrant clause analysis, the Court effectively exempted “an entire rubric of police conduct—necessarily swift action predicated upon the on-the-spot observations of the officer on the beat”—from the requirements of the warrant clause jurisprudence by saying that these situations could not be subject to the warrant requirement as a “practical matter.” Rather, the Court held that this type of police conduct must be analyzed under the “Fourth Amendment’s general proscription against unreasonable searches and seizures.”

27. Scott E. Sundby, A Return to Fourth Amendment Basics: Undoing the Mischief of Camara and Terry, 72 MINN. L. REV. 383, 389 (1988) (“When the fourth amendment governed . . . it provided the full protections of the warrant clause . . . .”).
28. Katz v. United States, 389 U.S. 347, 357 (1967) (“[S]earches conducted outside the judicial process, without prior approval by judge or magistrate, are per se unreasonable under the Fourth Amendment—subject only to a few specifically established and well-delineated exceptions.” (emphasis in original)).
29. Terry, 392 U.S. 1.
30. Id.; Maclin, supra note 6, at 678.
33. See id. (emphasizing that searches conducted without prior judicial approval are per se unreasonable, except in certain well-defined circumstances).
34. Id.
35. Terry, 392 U.S. at 20-22.
36. Id. at 20.
seizures." In doing so, Terry lowered the level of individualized suspicion required for a police officer to conduct a limited search or seizure of an individual. Unlike the warrant clause, the "general reasonableness" analysis does not require a written justification for the stop beforehand, nor does it require judicial oversight or solid evidence before a search or seizure can be carried out. The Court justified dispensing with the warrant requirement and its exceptions by focusing on the limited nature of the intrusion upon the individual. Instead of requiring a warrant supported by probable cause, the Court created a balancing test to evaluate the reasonableness of the particular searches and seizures in the case. To determine whether the officer's actions were justified, the Court balanced the government's interests against the interests of the person.

The Court found several legitimate government interests justifying the officer's intrusions, such as crime prevention and detection. Noting that the officer would have been derelict in his duties had he not stopped the men, the Court held that the officer's initial investigation of the situation furthered the legitimate government interests at hand, and it cited officer safety as a justification for the frisk of the defendant. Next, the Court considered the nature and quality of the intrusion on the interests of the individual—or as the Court termed it, "the sanctity of the person." While acknowledging that even a brief stop of a citizen is a serious intrusion "upon cherished personal security," the Court held that the government interests of crime prevention, crime detection, and officer safety outweighed the personal interests affected by the limited intrusion. Accordingly, Terry declared a per se rule: when based on reasonable suspicion, these limited intrusions are reasonable under the reasonableness clause of the Fourth Amendment and are therefore Constitutional.

In shifting the Fourth Amendment analysis for limited searches and seizures from the warrant clause framework to the reasonableness clause framework, "the Terry decision transformed Katz's individualistic, protection-oriented analysis
Effectively, "Terry ushered in a 'new regime'" of Fourth Amendment analysis, wherein the government's interests are given preference over the interests of the individual. Because the government interests outweigh the individual's rights, the intrusion is justified and is therefore reasonable under the Fourth Amendment. In the decades since Terry, courts have used the same reasonableness inquiry and balancing test to determine whether the reasonable suspicion standard should apply in other circumstances.

Yet, even while announcing a per se rule declaring reasonable, articulable suspicion as the new framework for these lesser searches and seizures, the Court in Terry was cognizant of the potential for officer abuse resulting in unwarranted intrusions upon individual rights. By analyzing intrusions under the reasonableness clause of the Fourth Amendment, the Court removed the protections of a warrant supported by probable cause and the judicial oversight that was necessary to obtain the warrant. Instead, it substituted reasonable suspicion, a standard of individualized suspicion requiring less than probable cause and no judicial oversight, while maintaining that this was sufficient Fourth Amendment protection for such limited intrusions.

Nonetheless, the Court made explicit that these limited intrusions were allowable based on a reasonable suspicion only if they were in fact limited to frisks, rather than full searches. The Court limited the officers' actions to those that serve the purpose of the limited intrusion—the safety of officers and crime prevention. In doing so, it built a safeguard into the Terry rule—a limit on the extent to which governmental interests can justify invasion of those individual interests of privacy and autonomy.

49. Id. at 20-22; Maclin, supra note 6, at 681.
50. Maclin, supra note 6, at 681 ("The only justification given by the Terry court for this fundamental change in Katz reasoning was the assertion that '[W]hat the Constitution forbids is not all searches and seizures, but unreasonable searches and seizures.' Thus, with the support of a truism, but without any persuasive explanation for its dismantling of Katz protection-oriented model, Terry ushered in a 'new regime.'" (quoting Terry, 392 U.S. at 9)).
51. Maclin, supra note 6, at 681.
52. See, e.g., Dunaway v. New York, 442 U.S. 200, 207-11 (1979) (considering whether or not Terry should apply to custodial interrogations); Maryland v. Buie, 494 U.S. 325 (1990) (considering whether or not Terry should be extended to protective sweeps of homes).
53. Terry, 392 U.S. at 16-20, 22.
54. Id. at 20 (explaining that "on-the-spot observations of the officer on the beat" should not and cannot be subject to the warrant procedure and should instead be analyzed under the reasonableness framework).
55. Id. at 26-27 (explaining that this lowered standard is appropriate for a limited search for weapons, though it would not be appropriate for an arrest).
56. Id. at 26 ("[The frisk] must be limited to that which is necessary for the discovery of weapons which might be used to harm the officer or others nearby . . . .").
57. Id. at 22-23, 26.
58. Id. at 26.
B. The Extension of Reasonable Suspicion

The Court's shift to the reasonableness clause framework for limited intrusions was prompted by its finding that governmental interests outweigh those of the individual when a violent felony—an armed robbery—is about to take place. In its decision, the Court did not discuss the application of this new standard of reasonable suspicion to misdemeanors or nonviolent crimes. Even so, courts have consistently applied the Terry standard to ongoing misdemeanors, finding that limited intrusions are per se reasonable if they are prompted by an officer's reasonable articulable suspicion. Because the reasoning in Terry suggests that the reasonable suspicion standard applies when an officer reasonably concludes that crime is "afoot," courts have applied it to all ongoing crimes, regardless of their classification as felonies, misdemeanors, or even traffic violations.

Before the Court's 1985 decision in Hensley, the Terry standard applied only in cases where police stopped the person based on suspicion that the person was about to commit, or was in the process of committing, a crime. In Hensley, the Court expanded the Terry doctrine to include stops based on a reasonable suspicion of a completed crime. To arrive at its holding, the Court applied the Terry balancing test and acknowledged that, in situations of past criminal activity, the governmental interests are weaker than in situations of imminent, ongoing criminal activity. First, the Court noted that there is no prevention interest in completed crimes, because a crime that has already taken place can no longer be prevented. Second, exigent circumstances are not usually present because the suspect has presumably left the scene of the crime, hidden evidence already, and is not aware that the police are on to him. Third, the government no longer has an interest in public safety when the crime is finished, because all

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59. Terry, 392 U.S. at 5-7 (detailing the facts of the case and noting that the detective in Terry believed the men were "casing a job, a stick up").
60. Id. at 29.
62. See id.; Terry, 392 U.S. at 30 ("[W]here a police officer observes unusual conduct which leads him reasonably to conclude in light of his experience that criminal activity may be afoot . . . ").
63. California courts have applied Terry to a variety of traffic offense stops. See, e.g., Kodani v. Snyder, 89 Cal. Rptr. 2d 131 (Ct. App. 1993) (unsafe lane change); People v. Bracken, 99 Cal. Rptr. 2d 481, 482 (App. Dep't Super. Ct. 2000) (weaving within lane).
65. Id. at 229.
66. Id. at 228 ("The factors in the balance may be somewhat different when a stop to investigate past criminal activity is involved rather than a stop to investigate ongoing criminal conduct.").
67. Id. ("A stop to investigate an already completed crime does not necessarily promote the interest of crime prevention as directly as a stop to investigate suspected ongoing criminal activity.").
68. Id. ("[T]he exigent circumstances which require a police officer to step in before a crime is committed or completed are not necessarily as pressing long afterwards.").
those endangered by the crime have already been affected. Finally, the Court observed that officers have more investigative options for past crimes than they do for occurring crimes—they have more time to make decisions, more time to talk to witnesses, and more time to investigate the scene than they do if they are simply chasing someone who is in the process of committing a crime.

Nonetheless, the Court found that the governmental interests were strong enough to prevail over the interests of the individual in certain circumstances. The Court held that particularly “where police have been unable to locate a person suspected of involvement in a past crime, the ability to briefly stop that person, ask questions, or check identification in the absence of probable cause promotes the strong government interest in solving crimes and bringing offenders to justice.” While the Court found a strong governmental interest in investigating completed crimes, it curtailed the interests of the individual by characterizing them merely as an interest “to be free of a stop and detention that is no more extensive than permissible in the investigation of imminent or ongoing crimes.” Because the stop in Hensley was less extensive, the Court found that the government’s interest in the prompt resolution of crimes, particularly felonies “involving a threat to public safety,” outweighed the interests of the individual.

Hensley allows law enforcement to make Terry stops where they 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.” However, the Court explicitly left open the question of “whether Terry stops to investigate all past crimes, however serious, are permitted.” In recent years, while many circuit and state courts have decided which standard of individualized suspicion an officer needs to investigate completed misdemeanors, few have agreed on whether the standard should be reasonable suspicion or how the Court should apply it. Yet, the common trends in these decisions, when taken together, suggest an alternate approach to completed misdemeanors that would simultaneously serve the interests of the government and individuals.

69. Id. ("Public safety may be less threatened by a suspect in a past crime who now appears to be going about his lawful business than it is by a suspect who is currently in the process of violating the law.").
70. Hensley, 469 U.S. at 228-29 (explaining that "officers making a stop to investigate past crimes may have a wider range of opportunity to choose the time and circumstances of the stop").
71. Id. at 229.
72. Id.
73. Id.
74. Id.
75. Id.
76. See supra note 15.
III. ARGUMENTS AGAINST EXTENDING TERRY TO ANY COMPLETED MISDEMEANORS

Many lower courts have held that Terry should not be applied in cases involving completed misdemeanors. These courts advance two primary reasons in support of their position. The first idea is that Terry does not apply because the Supreme Court did not include completed misdemeanors in the Terry or Hensley holdings. The second view is that the extension of Terry to such crimes is not warranted in light of the diminished public safety concerns inherent in completed crimes. However, a complete refusal to permit officers to conduct limited searches and seizures does not adequately protect the governmental interests at stake and it also creates difficulty when trying to apply Terry in the field.

A. Terry Should Not Be Expanded to Completed Misdemeanors Because Such an Extension Was Not Contemplated by the Supreme Court

Some courts have taken a narrow view, holding that the exclusion of misdemeanors from the holdings of Terry and Hensley suggests that such crimes are not encompassed by those doctrines. As a result, these courts have held that using the reasonable articulable suspicion standard for completed misdemeanors is not permissible under the requirements of the Fourth Amendment. In Gaddis v. Redford Township, the Sixth Circuit affirmatively stated that police may "make a stop when they have reasonable suspicion of a completed felony, though not of a mere completed misdemeanor." While Gaddis gave no justification for this rule, and announced it only in a footnote, other courts have cited it as the Sixth Circuit's per se rule against using the Terry standard for completed misdemeanors. In jurisdictions where the court has refused to extend Terry to completed misdemeanors, the warrant clause remains the appropriate

78. See Bennett, 520 So. 2d at 636 (Glickstein, J., concurring) ("The United States Supreme Court in Hensley specifically avoided deciding whether "Terry" stops could be made to investigate crimes that were not felonies. To date they have not decided this question. . . . In my judgment, stops to investigate suspects of past misdemeanors are not permissible.").
80. See Terry v. Ohio, 392 U.S. 1 (1968) (holding that the lower standard of individualized suspicion applied in a suspected robbery, a felony); Hensley, 469 U.S. at 221, 229 (1985) (stating explicitly that it was only deciding the issue regarding felonies).
81. See supra note 78.
82. 364 F.3d at 771 n.6.
83. Id.; see also United States v. Moran, 503 F.3d 1135, 1141 (10th Cir. 2007); United States v. Grigg, 498 F.3d 1070, 1075 (9th Cir. 2007); United States v. Hughes, 517 F.3d 1013, 1017 (8th Cir. 2008) (citing the Sixth Circuit as disallowing the Terry standard for completed misdemeanors).
85. See e.g., Gaddis v. Redford Twp., 364 F.3d 763, 771 n.6 (6th Cir. 2004); State v. Bennett, 520 So. 2nd 635, 636 (Fla. Dist. Ct. App. 1988).
framework of analysis for Fourth Amendment violations as they relate to those crimes. Refusing to extend Terry to any completed misdemeanor ignores one of the basic and often cited rationales for Terry stops—the government’s interest in crime detection—and places a great deal of emphasis on the mere omission of a specific discussion of completed misdemeanors from the Terry and Hensley decisions. While the Supreme Court’s decision to refrain from explicitly ruling on misdemeanor conduct (either in Terry or in Hensley) was undoubtedly intentional, this omission is not necessarily sufficient to indicate that the Supreme Court would adopt a per se rule proscribing Terry stops for the investigation of completed misdemeanors.

Another practical issue is presented by this blanket prohibition on using the Terry standard for completed misdemeanors. Because many crimes are status offenses that may be charged as either misdemeanors or felonies depending on the facts of each individual case, officers may not necessarily know whether the crime they are investigating is a felony or a misdemeanor at the initiation of the stop, let alone which classification will be charged by the District Attorney’s Office in the future. Essentially, officers would have to make split-second judgments as to whether each stop will be considered justified by a court at a later date; this would likely lead to confusion and a lack of consistency in the field.

B. Public Interest Does Not Warrant the Extension of Terry to Completed Misdemeanors

Other courts have held that the extension of Terry to completed misdemeanors is unwarranted, because the balancing test that the Supreme Court established in Terry and applied in Hensley weighs more heavily in favor of individual rights. In Terry, the Court concluded that the governmental interests of crime prevention, crime detection, and officer safety outweighed the individual’s interests in autonomy and privacy in public. While the Court in

86. Terry, 392 U.S. at 22 ("One general interest is of course that of effective crime prevention and detection; it is this interest which underlies the recognition that a police officer may in appropriate circumstances and in an appropriate manner approach a person for purposes of investigating possibly criminal behavior even though there is no probable cause to make an arrest.").
87. Id. at 6, 29-30 (Terry was decided in the felony context and the Court did not address misdemeanors); Hensley, 469 U.S. at 229 (stating explicitly that the Court was only deciding the issue regarding felonies).
88. Tennessee v. Garner, 471 U.S. 1, 20 (1985) ("[T]he highly technical felony/misdemeanor distinction is equally, if not more, difficult to apply in the field.").
89. E.g., State v. Duncan, 43 P.3d 513, 518 (Wash. 2002); Blaisdell v. Comm’r of Pub. Safety, 375 N.W.2d 880, 881, 883-84 (Minn. Ct. App. 1985); see also Hensley, 469 U.S. at 227-29; Terry, 392 U.S. at 20-25.
Hensley noted that the governmental interests of crime prevention and detection are lessened in the case of a completed crime,91 it still found that the governmental interests outweighed those of the individual in felony cases.92

In State v. Duncan, the Washington Supreme Court noted that "the Court's focus on preventing crimes, and promoting the interests of justice in arresting felons in Hensley, suggests that the interest in preventing [lesser offenses] may not be accorded the same weight."93 Similarly, in Blaisdell v. Commissioner of Public Safety, the Minnesota Court of Appeals declared that "the limited benefits to the public interest resulting from warrantless vehicle stops to investigate past misdemeanors do not outweigh the intrusion on the 'motorists' right to free passage without interruption."94 Blaisdell concerned a misdemeanor "no pay" gas theft that occurred approximately two months prior to the stop at issue in the case.95 When the officer stopped the car, the only suspicion he had was the gas station clerk's positive identification of the vehicle as the one involved in the crime.96 Beyond that, the defendant driver had never been identified as the particular person involved in the gas theft.97 In Blaisdell, the court held that stops based upon reasonable suspicion of a completed misdemeanor are per se unreasonable.98 The court reasoned that the investigation of a completed misdemeanor does not require the same kind of swift action or "on-the-spot"99 decision-making as investigations of crimes that warrant the Terry standard.100 Terry shifted the framework of Fourth Amendment analysis for "an entire rubric of police conduct . . . which historically has not been, and as a practical matter could not be, subjected to the warrant procedure."101 Specifically, the Terry stop was created to facilitate the investigations of police officers on-the-beat, while the Terry frisk was permitted to protect the safety of those officers.102 But in the case of completed crimes, investigative decisions rarely need to be made as swiftly as those decisions regarding ongoing crimes. Furthermore, completed

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91. See supra notes 67-68.
92. Hensley, 469 U.S. at 229 (despite the differences between ongoing and past criminal activity, the Court still found that allowing Terry for completed felonies would "promote[] the strong government interest in solving crimes and bringing offenders to justice.").
93. 43 P.3d at 518. The court in this case considered the propriety of an officer's decision to detain three black men for a possible civil infraction—an open container—because the men were at a public bus stop, standing six inches from a paper bag with a bottleneck protruding from the top. Id. at 514-15.
94. Blaisdell, 375 N.W.2d at 881, 883-84.
95. Id. at 881.
96. Id.
97. Id.
98. Id. at 881, 883-84.
100. Blaisdell, 375 N.W.2d at 883-84.
101. Terry, 392 U.S. at 20.
102. Id. at 20, 27.
misdemeanors are not the type of offenses that "by [their] nature would not obviate the possession of a weapon."\(^{103}\)

Implicit in the court's reasoning in Blaisdell was a perception that the Supreme Court's application of the Terry standard to completed felonies turned primarily on the risk to public safety—an interest that is far less pressing in cases involving mere misdemeanors or infractions.\(^{104}\) In other words, because misdemeanors are "less grave" than felonies, an individual's interests in "personal security and liberty" outweigh any interest the government may have in bringing those misdemeanor offenders to justice absent the traditional probable cause and warrant requirements.\(^{105}\) Because the Court in Terry based its holding on a concern for the safety of officers and the prevention of a violent crime—armed robbery—presumably, the Terry level of individualized suspicion should only apply where officer safety and violent crimes are at issue.\(^{106}\) Since most misdemeanors are presumably nonviolent crimes, they should not be subject to reasonable suspicion standard allowed under Terry.\(^{107}\)

Restricting the Terry holding to felonies properly narrows its application to those situations where the governmental interest is the strongest—where there is a potential for harm to the officer to occur or for a violent crime to be committed.\(^{108}\) On the other hand, characterizing all misdemeanor offenses as nonviolent does not fully comport with the public safety rationale. For example, it fails to take into account that violent crimes, such as assault, may nevertheless be classified as misdemeanors in certain jurisdictions.\(^{109}\) Furthermore, it fails to recognize that certain misdemeanors that are not necessarily "violent," may nonetheless put the public at risk of harm, such as drunk driving offenses.\(^{110}\)

103. State v. Duncan, 43 P.3d 513, 519 (Wash. 2002).
104. Blaisdell, 375 N.W.2d at 881, 883-84 ("[T]he limited benefits to the public interest resulting from warrantless vehicle stops to investigate past misdemeanors do not outweigh the intrusion on the "'motorists' right to free passage without interruption.'" (quoting United States v. Martinez-Fuerte, 428 U.S. 543, 557-58 (1976) (quoting Carroll v. United States, 267 U.S. 132 (1925))); see also Duncan, 43 P.3d at 519 ("Accepting the presumption that more serious crimes pose a greater risk of harm to society, we place an inversely proportional burden in relation to the level of the violation. Thus, society will tolerate a higher level of intrusion for a greater risk and higher crime than it would for a lesser crime.").
105. Blaisdell, 375 N.W.2d at 883 ("We must also acknowledge the disparate legislative treatment accorded felonies and misdemeanors . . . . [T]he public concerns served by seizures to investigate past misdemeanors are less grave than the concerns served by seizures to investigate past felonies and gross misdemeanors.").
106. Terry, 392 U.S. at 23-27; see Duncan, 43 P.3d at 519 (acknowledging that "society will tolerate a higher level of intrusion for a greater risk and higher crime than it would for a lesser crime" and comparing the crime at issue, a violation of an open container law, with the crime in Terry, a potential armed robbery).
107. Duncan, 43 P.3d at 519.
109. See CAL. PENAL CODE § 240 (West 2008) (defining assault as "an unlawful attempt, coupled with a present ability, to commit a violent injury on the person of another"). Assault under this code is a misdemeanor under California law, as it is punishable by imprisonment of no more than six months. Even so, it is a violent crime by definition. Id.
110. CAL. VEH. CODE § 23152(b) (West Supp. 2010) (making it unlawful to drive with a blood alcohol
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As discussed above, refusing to apply Terry to all misdemeanors ignores the government’s interest in crime detection. While the Court in Terry maintained that there is little or no government interest advanced by pursuing completed crimes under a reasonableness, rather under than a traditional warrant clause analysis, the reasonable suspicion standard may in fact serve the government’s important interest in crime detection, particularly where there is a propensity for ongoing or repeated danger. The government’s interest in detecting crime and bringing offenders to justice, although lowered, may still be present in misdemeanor cases, especially in the case of violent misdemeanors, such as battery or spousal abuse.

IV. ARGUMENTS FOR EXTENDING TERRY TO ALL COMPLETED MISDEMEANORS

Another option for the Court would be to extend Terry to all completed misdemeanors. Under this approach, the Court would have two options: it could declare a per se rule extending Terry to all completed misdemeanor crimes, or it could balance the particular interests involved and determine the reasonableness of each completed misdemeanor stop on a case-by-case basis. Unfortunately, neither provides proper protection for individual rights. While the former method simply does not place enough importance on the rights of the individual; the latter method does not adequately deter officers from making the stop first and justifying it later.

A. A Per Se Extension of Terry

At least one court has extended the per se rules of Terry and Hensley to completed misdemeanors, without issue. In Terry, the Court held that limited searches and seizures are per se reasonable under the Fourth Amendment if an officer has a reasonable articulable suspicion that a crime is being committed. Because the Court in Terry was concerned with the practical implications of its

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111. See supra Part III.A.
112. Grigg, 498 F.3d at 1081.
114. Grigg, 498 F.3d at 1081.
115. State v. Myers, 490 So. 2d 700, 704 (La. Ct. App. 1986) (“A Louisiana law enforcement officer may stop a person in a public place whom he reasonably suspects has committed an offense and may demand from him his name, address, and an explanation of his actions. Offense is defined to include a felony or a misdemeanor.”).
holding for officers working “on-the-beat,” it announced a per se rule which would presumably be easier to apply in the field.  

Extending the Terry holding to all completed misdemeanors would serve its traditional objectives and give officers a concrete rule to apply in their daily duties on the job. A court using this approach would most likely determine that the governmental interests outweigh the interests of the individual, regardless of whether the crime is classified as either a misdemeanor or felony. In Hensley, for instance, the Court gave very little deference to the interests of the individual and found that there was a strong governmental interest, even after acknowledging that the government’s interest may be lessened in the case of completed crimes.  

While an extension of Terry to all completed misdemeanors would be easy to apply in the field, it would also perpetuate the further diminution of individual rights—a result not necessarily contemplated by the Court’s narrow holding in Terry. The Terry reasonableness framework was predicated on the idea that it would be impractical for an investigating officer to obtain a warrant for a crime being committed “on-the-beat.” Allowing officers to circumvent the warrant process for every potential misdemeanor that has already been completed confers entirely too much deference to the government interest and does not do nearly enough to protect individual rights. In Terry, the Court noted that even a brief detention was a severe intrusion upon a person’s liberty—an intrusion that the Court justified in the context of a violent, ongoing crime. A per se application of Terry to all crimes, no matter how insignificant, virtually ignores this

117. Id. at 20 (“[W]e deal here with an entire rubric of police conduct—necessarily swift action predicated upon the on-the-spot observations of the officer on the beat—which historically has not been, and as a practical matter could not be, subjected to the warrant procedure. Instead, the conduct involved in this case must be tested by the Fourth Amendment’s general proscription against unreasonable searches and seizures.”).  

118. See, e.g., Myers, 490 So.2d at 703-04 (noting that while the balancing test employed in Terry and Hensley “balances the nature and quality of the intrusion on personal security against the importance of the governmental interests alleged to justify the intrusion,” a police officer may nevertheless conduct a limited search or seizure of an individual who “he reasonably suspects has committed an offense,” without regard to whether that offense is defined as a felony or a misdemeanor).  


120. Wasserstrom, supra note 108, at 264 (“Clearly, the Terry Court would not have approved of the extensive balancing that now goes on in its name. Nor would it have struck the balance so consistently in favor of law enforcement interests, for the Court in Terry emphasized both the ‘narrowness’ of the question it was deciding, and the ‘narrowly drawn authority’ of the police to search or seize without a warrant or probable cause.”).  

121. Terry, 392 U.S. at 20.  

122. See Wasserstrom, supra note 108, at 264 (noting that the Court in Terry was hesitant to afford too much deference to the interests of law enforcement).  

123. Terry, 392 U.S. at 16-17 (“[I]t is simply fantastic to urge that such a procedure performed in public by a policeman while the citizen stands helpless, perhaps facing a wall with his hands raised, is a ‘petty indignity.’ It is a serious intrusion upon the sanctity of the person, which may inflict great indignity and arouse strong resentment, and it is not to be undertaken lightly.”).
By placing so little importance on individual rights, this approach does not appropriately address its potential consequences.

B. The Balancing Act

Another possible approach the Court could pursue would be to apply the totality of the circumstances balancing test announced in Terry, and reapplied in Hensley, to each individual type of crime being investigated. This would allow the court to balance the competing interests of the government and the individual as required by the particular aspects of each type of crime. In the last several years, three circuit courts and one district court have advocated for this balancing approach, using extremely fact-specific reasons to justify either the application or non-application of Terry.

In United States v. Moran, the Tenth Circuit found that the stop of the defendant was reasonable where the nature of the stop was brief and non-intrusive, and there was a high potential that the defendant was armed. Moran involved the suspicion of a completed misdemeanor of criminal trespass. The court’s analysis considered, among other things, the location of the property, the fact that it was hunting season, the fact that the defendant had experienced past altercations with the property owner, and the fact that the defendant had trespassed on the property before. The court held that the Terry standard of reasonable suspicion was the appropriate level of individualized suspicion required to stop the defendant’s car. The court stressed that its holding was based purely on the balancing test, reasoning that the potential for an altercation, and the potential that the defendant was armed weighed heavily in favor of the governmental interest. The court in Moran limited its holding to the specific facts of the case, emphasizing the “limited and fact-dependent nature” of its holding.
In another criminal trespass case, *United States v. Hughes*, the Eighth Circuit found, based on the particular facts of the case, that the governmental interest did not outweigh the individual's interest.\textsuperscript{134} In that case, the defendant was not acting suspiciously, there was no report of a crime, and nothing in the dispatch of the call indicated a dangerous situation.\textsuperscript{135} The court found that public safety was of primary importance in the balancing test.\textsuperscript{136} Since there was no pressing public safety issue, no important government interest in apprehending this particular defendant, and no government interest in investigating this particular crime, the individual's interests outweighed those of the government.\textsuperscript{137} Thus, the court held that the lowered level of reasonable suspicion was inappropriate and unwarranted where there was no indication of danger.\textsuperscript{138}

The Ninth Circuit case of *United States v. Grigg* was another case in which the court, after applying the fact-specific balancing test, decided not to extend the *Terry* standard to the investigation of a completed misdemeanor.\textsuperscript{139} In *Grigg*, the court held that the stop was unreasonable because the misdemeanor in question—a local noise ordinance violation—was completely harmless.\textsuperscript{140} The court reasoned that the important factors to be weighed were less fact-specific and more general—the potential harm to others and the possibility that the police may have alternative means to achieve the investigative purpose.\textsuperscript{141} Under this analysis, the court evaluated the legitimacy of the governmental interests before even looking to the privacy interests of the individual.\textsuperscript{142}

Seemingly, this balancing act promotes the fair administration of justice because it focuses on the facts and the interests involved in each individual case. To determine the appropriate level of individualized suspicion under this approach, individual officers are required to assess whether the government's interests outweigh the interests of the person being stopped. However, while academically intriguing, this approach is limiting and could prove difficult in practice. First, as demonstrated by the cases above, this fact-specific, case-by-

\textsuperscript{134} 517 F.3d 1013, 1018 (8th Cir. 2008).
\textsuperscript{135} Id. (holding that the mere risk of confrontation with a property owner, standing alone, was not enough to outweigh the defendant's interest).
\textsuperscript{136} Id. at 1017.
\textsuperscript{137} Id. at 1018.
\textsuperscript{138} Id. (holding that the mere risk of confrontation with a property owner, standing alone, was not enough to outweigh the defendant's interest).
\textsuperscript{139} 498 F.3d 1070, 1081 (9th Cir. 2007).
\textsuperscript{140} Id. at 1077 ("[I]t is difficult to imagine a less threatening offense than playing one's car stereo at an excessive volume. The absence of any danger to any person arising from the misdemeanor noise violation here does not support detaining the suspect as promptly as possible.").
\textsuperscript{141} Id. at 1081 ("An assessment of the 'public safety' factor should be considered within the totality of the circumstances, when balancing the privacy interests at stake against the efficacy of a *Terry* stop, along with the possibility that the police may have alternative means to identify the suspect or achieve the investigative purpose of the stop.").
\textsuperscript{142} Id.
case balancing inquiry lacks consistency, because it relies on an individual officer to make a subjective judgment of the situation at hand. Second, since this approach only affords retroactive protection of Fourth Amendment interests and circumvents judicial oversight, it could easily give rise to abuse of discretion by officers, in turn resulting in public distrust of the system.

It is entirely foreseeable that an officer would value the government’s interest as more important than the interests of a potential defendant. But the Court in Terry did not intend for the rights of individuals to be relegated to the prejudices of officers; in fact, the Court was very clear that the rights of individuals were not to be ignored. An officer-conducted balancing test would leave the individual to simply wait and hope that a court would disagree with the officer’s judgment and come to a correct determination of their case years after the initial intrusion. It is possible that without the judicial oversight provided by the warrant process, officers would be allowed far too much discretion to interfere with individual rights. Officers will simply act first and justify their actions later, rather than having to explain the reasons for their actions to a judge beforehand. A per se rule about Terry’s application would inform officers of what level of individualized suspicion is needed before the stop—rather than assuming that the government’s interest outweighs the interest of the particular individual and requiring justification after the stop.

Further, this balancing test approach would not be practical for on-the-beat policing—the context in which Terry was decided. This approach lacks proper guiding principles to aid officers in the field, because officers would have no way of knowing the proper level of individualized suspicion before they decide whether or not to stop an individual. Officers need a rule that can be easily applied in their daily duties—and preferably, it should be a rule that is not subject to the whims or prejudices of particular officers. Even if officers could consistently and knowledgeably apply this balancing test, such balancing is a job for the court, not for individual officers. When it comes time for the Supreme Court to decide a Terry case, it must surely be an annoying, frightening, and perhaps humiliating experience.

143. See supra note 125.
144. See Terry v. Ohio, 392 U.S. 1, 22 (1968) (“If subjective good faith alone were the test, the protections of the Fourth Amendment would evaporate, and the people would be ‘secure in their persons, houses, papers, and effects,’ only in the discretion of the police.”); David A. Harris, The Stories, the Statistics, and the Law: Why “Driving While Black” Matters, 84 MINN. L. REV. 265, 265-73 (1999) (“Pretextual traffic stops aggravate years of accumulated feelings of injustice, resulting in deepening distrust and cynicism by African-Americans about police and the entire criminal justice system.”).
145. Terry, 392 U.S. at 24-25 (noting that even a brief search or seizure is a severe “intrusion upon cherished personal security, . . . it must surely be an annoying, frightening, and perhaps humiliating experience”).
146. See supra note 121.
147. In both Terry and Hensley, the Court consciously articulated per se rules for the application of reasonable suspicion. Terry, 392 U.S. at 30; United States v. Hensley, 469 U.S. 221, 229 (1985).
148. See Harris, supra note 144 (noting the potential for officers to target certain minorities in their investigations).
149. Terry, 392 U.S. at 21 (“The scheme of the Fourth Amendment becomes meaningful only when it is
Court to take up the issue of whether or not the Terry standard of reasonable suspicion should be applied to cases involving completed misdemeanors, it should do as it did in Terry and Hensley—announce a per se rule that is practical for use by officers in the field.150

V. A MIXED APPROACH—EXTENDING TERRY TO SOME COMPLETED MISDEMEANORS

A final approach to the completed misdemeanor dilemma is a mixed method—one that allows for the proper consideration of both the interests of the government and the interests of the individual. This approach would extend the Terry reasonable suspicion standard to those completed misdemeanor offenses implicating public safety, setting clear-cut guidelines for those situations where the governmental interest is at its strongest. While this approach is a novel one, it is supported by the reasoning of Terry and Hensley and the rulings of several lower courts.151 Furthermore, an adequate definition of “public safety” can be easily fleshed out through the analogical reasoning of the Court’s decisions in other areas of criminal justice.152

A. Providing Adequate Protection for the Government’s Interest in Public Safety

Upon consideration of all suggested approaches, the Supreme Court should adopt a standard that extends the Terry reasonable articulable suspicion standard to all police stops where a completed misdemeanor posing an ongoing threat to public safety is suspected. The balancing test enunciated in Terry justifies such an intrusion on individual interests by according substantial weight to the potential threat to the safety of others or the officer.153 In subsequent decisions, courts have consistently held that public safety is an important consideration in the Terry balancing test, and it justifies the use of reasonable suspicion for limited intrusions.154

assured that at some point the conduct of those charged with enforcing the laws can be subjected to the more detached, neutral scrutiny of a judge who must evaluate the reasonableness of a particular search or seizure in light of the particular circumstances.”).
150. Id. at 30; Hensley, 469 U.S. at 229.
151. See Hensley, 469 U.S. 221; Terry, 392 U.S. 1; United States v. Grigg, 298 F.3d 1070 (9th Cir. 2007); United States v. Hughes, 517 F.3d 1013 (8th Cir. 2008); United States v. Jegede, 294 F. Supp. 2d 704 (D. Md. 2003) (focusing on the safety of the public and officers involved to determine whether or not the intrusion upon individual rights was warranted).
152. See supra note 151.
153. Terry, 392 U.S. at 26 (“[The stop] must be limited to that which is necessary for the discovery of weapons which might be used to harm the officer or others nearby.”).
154. Id. at 24 (“[W]e cannot blind ourselves to the need for law enforcement officers to protect themselves and other prospective victims of violence in situations where they may lack probable cause for an arrest.”).
The court in *Grigg* explained that the danger inherent in felonies makes them categorically different from misdemeanors, but if a misdemeanor also presents a threat to public safety, then an officer should be able to stop and investigate. Similarly, in *Hughes*, the court held that public safety was an important factor in the *Terry* balancing test. Further, in *United States v. Jegede*, a Maryland District Court noted that "[p]ublic safety may be less threatened by a suspect in a past crime who now appears to be going about his lawful business than it is by a suspect who is currently in the process of violating the law."

Essentially, past crimes contain no exigent circumstances, and absent a propensity for ongoing danger, the government’s interest is simply not strong enough to justify the violation of the individual’s privacy and autonomy interests absent probable cause and a warrant or warrant exception. The court’s focus on the nature of the misdemeanor in *Grigg* seeks to inform the weight of the governmental interest. Essentially, the court in *Grigg* reasoned that the governmental interest of solving crime and bringing offenders to justice is lessened when those crimes and those offenders pose little, if any, threat to society. Under this reasoning, individual rights should only be impeded where there is potential for harm to officers or to members of the public, because the government’s interest is strongest when it involves protecting public safety. Conversely, where there is no threat to public safety in the context of a completed misdemeanor, the Court “should tend to give primary weight to a suspect’s interest in personal security . . . considering the law enforcement’s interest in the immediate detention of a suspect is not paramount.” That is not to say that the government has no interest in bringing these offenders to justice—just that its interest is not strong enough to warrant a lower level of
individualized suspicion and the absence of judicial oversight. Accordingly, under this approach, stops for completed misdemeanors that do not implicate public safety would continue to be analyzed under the framework of the warrant clause, rather than that of the reasonableness clause, thus requiring the higher level of probable cause and a warrant or warrant exception to justify an officer’s search or seizure of an individual or property.

B. Overcoming Concern Regarding the Practical Application of a Balancing Test

While the court in Grigg purported to use a fact-specific balancing test, the reasoning of the case seems to support an analysis based on public safety concerns:

We adopt the rule that a reviewing court must consider the nature of the misdemeanor offense in question, with particular attention to the potential for ongoing or repeated danger (e.g., drunken and/or reckless driving), and any risk of escalation (e.g., disorderly conduct, assault, domestic violence). An assessment of the “public safety” factor should be considered within the totality of the circumstances, when balancing the privacy interests at stake against the efficacy of a Terry stop, along with the possibility that the police may have alternative means to identify the suspect or achieve the investigative purpose of the stop.

While this is still balancing in some sense, it is focused on more concrete factors, such as the potential for ongoing or repeated danger and any risk of escalation. This approach will increase consistency in the application of the Terry standard by the courts, because the courts can fit the facts of each case into this public-safety-specific framework. This approach also lessens the amount of discretion that individual officers in the field can exercise, because certain crimes necessarily implicate public safety. By limiting officer discretion, the possible abuses of that discretion are also lessened.

163. See supra note 161 (where there is no threat to public safety, the government’s interest is inherently lower).
164. See Terry v. Ohio, 392 U.S. 1, 20 (1968) (“We do not retreat from our holdings that the police must, whenever practicable, obtain advance judicial approval of searches and seizures through the warrant procedure, or that in most instances failure to comply with the warrant requirement can only be excused by exigent circumstances.”).
165. Grigg, 498 F.3d at 1081.
166. Id.
167. Id.
168. See CAL. PENAL CODE § 240 (West 2008) (including the word “violent” in the definition of assault, a misdemeanor under California law).
169. See Harris, supra note 144 (describing some of the potential adverse consequences of deferring to an officer’s judgment).
C. Applying the Mixed Approach

In brief, the Terry standard should only apply to completed misdemeanors where the crime in question implicates public safety. In applying this rule, the court should weigh the public safety factors described in Grigg—the potential for ongoing or repeated danger, the risk of escalation, and whether or not the police have an alternate means of achieving the purpose of the stop.\(^7\)

This approach effectively deals with the misdemeanor versus felony distinction, because the actual classification of the crime is less important. Because many crimes are "wobblers," meaning they can be charged either as a felony or a misdemeanor, focusing on the immediate public safety implications rather than the statutory classification provides a clearer standard for the application of Terry.

Furthermore, this proposed rule is amply supported by current case law. Despite their differing approaches to the facts of each particular case, seven of the nine state and circuit court cases discussed in this Comment considered public safety in at least some fashion—\(^7\) and although these courts used the public safety factor in different ways and accorded it different weight, the majority of the cases that applied Terry to completed misdemeanors mentioned it nonetheless.\(^7\) Clearly, courts are finding that public safety should play at least some part in Fourth Amendment analysis, and this proposed approach is consistent with that trend.

D. Defining What Qualifies as "Public Safety"

The shortcoming of the "public safety" approach is that it lacks clarity regarding what exactly qualifies as "public safety" and what types of conduct can be, or should be, considered a "threat" to it. Grigg identified several misdemeanor offenses it considered to be under the umbrella of a "threat to public safety," namely drunken or reckless driving, disorderly conduct, assault, and domestic violence.\(^7\) Each of these crimes involves a risk of harm to another person and therefore implicates public safety. For some crimes, officers will

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170. Grigg, 498 F.3d at 1081.
172. See supra note 161.
173. Compare Grigg, 498 F.3d at 1081 (using public safety as a paramount factor in the consideration of whether Terry should apply), with State v. Myers, 490 So. 2d 700, 704 (La. Ct. App. 1986) (referencing public safety seemingly as an afterthought with concerns only expressed in dicta after the court decided to extend Terry to completed misdemeanors).
174. See supra note 161.
175. See supra note 161.
176. Grigg, 498 F.3d at 1081.
know whether or not public safety is implicated by the very definition of the offense.\footnote{177}{See, e.g., CAL. PENAL CODE § 240 (West 2008) (defining assault as a violent crime).}

However, some crimes do not clearly implicate public safety, such as criminal trespass—an offense over which courts have split in regards to the public safety issue.\footnote{178}{Compare United States v. Moran, 503 F.3d 1135, 1143 (10th Cir. 2007) (holding that Terry should be the applicable standard and that, under Terry, the stop was reasonable, because it was hunting season, the trespassing occurred on a property near a forest, the crime had occurred just moments prior to the stop, and the property owner had many altercations with the defendant in the past), with United States v. Hughes, 517 F.3d 1013, 1018 (8th Cir. 2008) (noting that where nothing in the dispatch indicated that the trespasser was dangerous and there was no threat to public safety, a Terry stop was not justified to investigate the completed crime).}

For crimes that are not violent or dangerous by their very definitions, the Court should issue guidelines that would allow officers to use the Terry standard when investigating a crime that has the potential to implicate public safety. Some of the considerations of the “public safety” factor advanced by lower courts include: the potential capacity of the infliction of serious damage,\footnote{179}{State v. Myers, 490 So. 2d 700, 704 (La. Ct. App. 1986).} ongoing or repeated danger, and a risk of escalation.\footnote{180}{Myers, 490 So.2d at 702 (“Reasonable cause for an investigatory stop is something less than probable cause.”).} Where a crime is not specified as a violent crime, or as a non-violent crime implicating public safety (such as drunk driving), officers would be allowed to use the above-mentioned factors to determine whether the extension of Terry to public safety misdemeanors covers the crime being investigated.

\section*{V. CONCLUSION}

The Terry case ushered in an era of rulings that diminished the value of individual rights and gave great deference to the government by allowing officers to use a standard of individualized suspicion “less than probable cause”\footnote{181}{Grigg, 498 F.3d at 1081.} in justifying an investigative stop of a person.\footnote{182}{Terry v. Ohio, 392 U.S. 1 (1968); Maclin, supra note 6, at 676.} In the forty years since the Supreme Court decided Terry, other courts have applied the reasonable articulable suspicion standard in several contexts extraneous to Terry's initial holding.\footnote{183}{See, e.g., United States v. Hensley, 469 U.S. 221, 226 (1985) (holding that Terry applies to completed felonies); People v. Le Grand, 110 A.D.2d 539 (N.Y. App. Div. 1985) (holding that Terry applies to felonies and misdemeanors).} When the Supreme Court takes up the issue of whether or not Terry should be applied to cases involving completed misdemeanors, it should rule that the reasonable suspicion standard is only applicable to those completed misdemeanors that implicate the governmental interests set forth in Terry\footnote{184}{Terry, 392 U.S. at 22-24 (citing crime prevention and detection and officer safety as important governmental interests).} and expanded on in the decades since. In other words, the Supreme Court should only

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\item 177. See, e.g., CAL. PENAL CODE § 240 (West 2008) (defining assault as a violent crime).
\item 178. Compare United States v. Moran, 503 F.3d 1135, 1143 (10th Cir. 2007) (holding that Terry should be the applicable standard and that, under Terry, the stop was reasonable, because it was hunting season, the trespassing occurred on a property near a forest, the crime had occurred just moments prior to the stop, and the property owner had many altercations with the defendant in the past), with United States v. Hughes, 517 F.3d 1013, 1018 (8th Cir. 2008) (noting that where nothing in the dispatch indicated that the trespasser was dangerous and there was no threat to public safety, a Terry stop was not justified to investigate the completed crime).
\item 180. Grigg, 498 F.3d at 1081.
\item 181. Myers, 490 So.2d at 702 (“Reasonable cause for an investigatory stop is something less than probable cause.”).
\item 182. Terry v. Ohio, 392 U.S. 1 (1968); Maclin, supra note 6, at 676.
\item 184. Terry, 392 U.S. at 22-24 (citing crime prevention and detection and officer safety as important governmental interests).
\end{thebibliography}
extend the *Terry* standard to cover those completed misdemeanors involving a risk to public safety and a need for the officer make an “on-the-spot” decision of whether or not to investigate further.185

To facilitate this balancing of rights, the Court could announce a rule detailing specifically those misdemeanor crimes, or more generally, the type of misdemeanor crimes intended to be covered by the holding, or it could choose to keep completed misdemeanors under the purview of the warrant clause analysis. In fashioning its rule, the Court could rely on the factors relating to public safety articulated in *Grigg* to determine whether the particular misdemeanor warrants the lowered standard.186

This rule would simultaneously protect both the interests of the government and those of the individual. Because potential harm to officers or the public often raises governmental interests above individual rights,187 the public safety context should be the only context in which the Court extends the *Terry* standard to allow any further reduction in the protection of individual rights.

185.  *See supra* note 117.
186.  *See supra* note 170 and accompanying text.