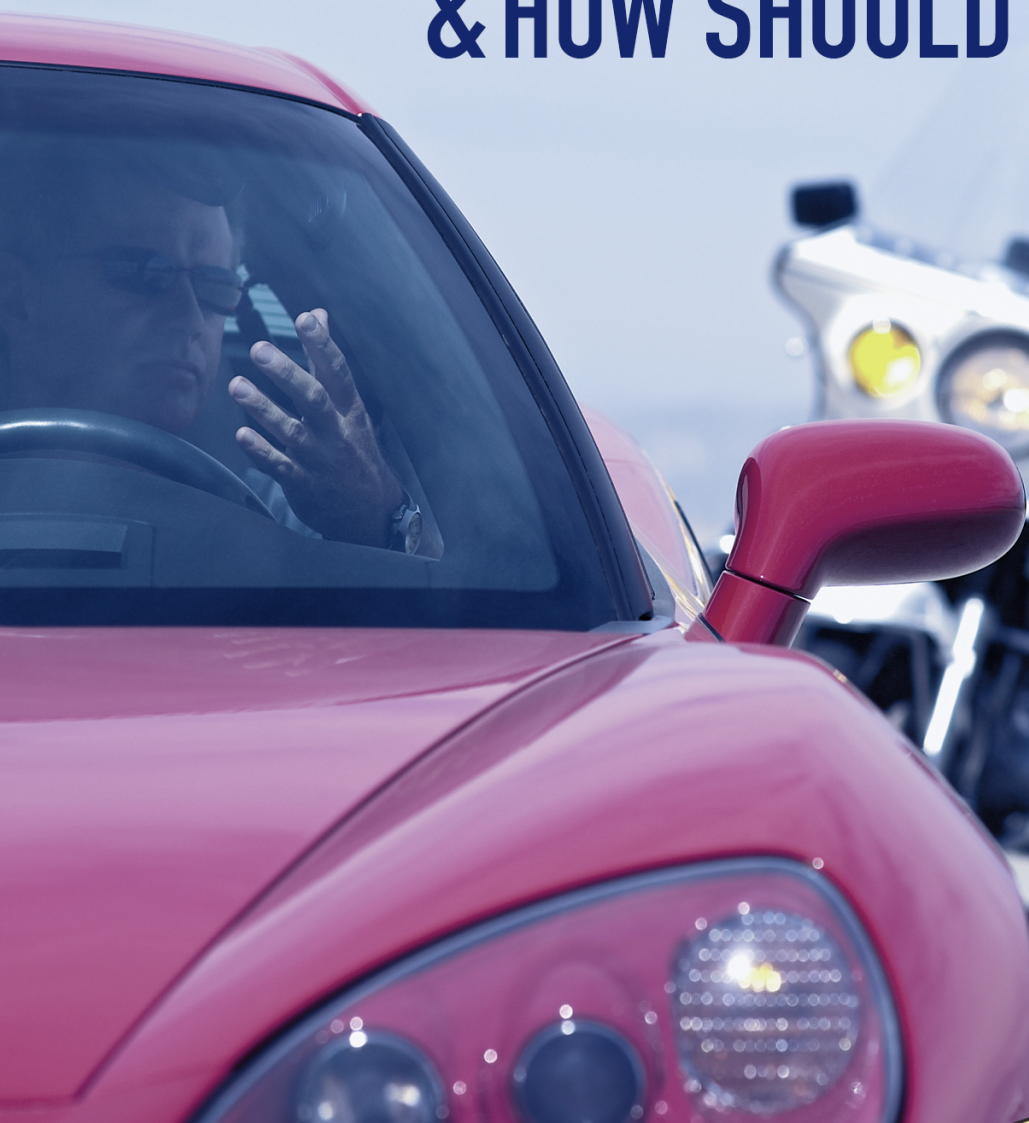




POLICE TRAFFIC STOPS

**WHAT ARE YOUR RIGHTS
& HOW SHOULD YOU ACT?**



★★ **SPECIAL REPORT** ★★



Red and blue flashing lights in your rearview mirror are as adrenaline inducing and as heart racing as any rollercoaster ride or Hollywood thriller. Did the speed limit drop? Is my inspection sticker expired? Did my taillight burn out and I didn't even know it?

Driving your car is as much a part of daily life as waking up. However, while much of your time is spent in the private secure areas of your home and your work, driving is not the same. To drive you must be on public roadways with other drivers, pedestrians, and most importantly the police enforcing the rules of the road.



YOUR FOURTH AMENDMENT RIGHTS



While the majority of traffic stops conclude with "Sign here, this is your court date, be safe," there is always the potential that things could go further. What happens if the police officer thinks you have a bad attitude, asks you questions you don't want to answer, or starts looking through your windows? He orders you out so he can start looking through your car. Even though you know you have done nothing wrong, do you have rights? It is here, behind the wheel, where you are most likely to encounter the police, and most likely to need your Fourth Amendment rights.

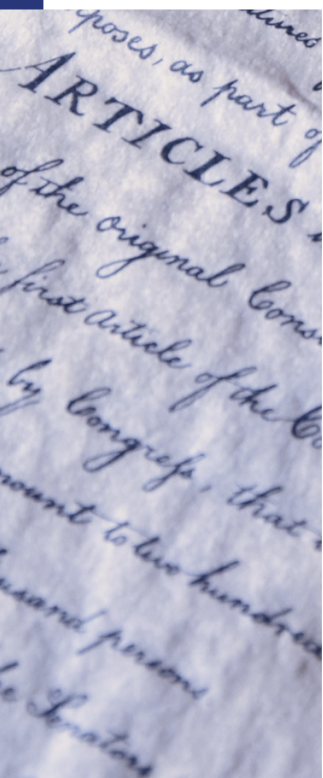
The law regarding search and seizure has been developed by the courts over the years, but it started in one of the amendments to the United States Constitution.

THE FOURTH AMENDMENT GUARANTEES:

People shall be secure in their persons, houses, papers, and effects from unreasonable searches and seizures, and that any searches or seizures shall take place with a warrant. A warrant shall be issued upon the showing of probable cause that a crime has been committed or is being committed.

While this right to be free from unreasonable searches and seizures may be a fundamental right, it is by no means without exception. Congress, state legislatures, and the courts continuously carve out exceptions to the warrant requirement. When deciding whether or not a warrantless search is constitutional, the Fourth Amendment sets forth the presumption that a police search without a warrant is "unreasonable."

The justification for any exception to the presumed unreasonableness of a warrantless police search will fall under the state's compelling interest in police or public safety, the preservation of evidence, or both. Nowhere in our daily lives do we run a greater risk of being involved in a police encounter which can possibly involve our Fourth Amendment rights than the common routine traffic stop.



WHEN CAN THE POLICE MAKE A WARRANTLESS SEARCH OF OUR CARS AND UNDER WHAT AUTHORITY CAN THEY DO IT?



THE AUTOMOBILE EXCEPTION

In 1925, the Supreme Court in *Carroll v. United States*, a case involving prohibition and bootleggers, held that unlike homes (which are stationary), the automobile may be quickly moved, thus making it more difficult to secure and detain for purposes of getting a search warrant.

The Supreme Court has since further expanded its justifications for allowing warrantless searches of automobiles to include the rationale that people have a lessened "expectation of privacy" in their vehicles. This is because the interior of the vehicle is open to plain view, and the automobile itself is subject to increased government regulations.

There is not only a lessened expectation of privacy in the automobile itself, but in compartments, containers and packages contained or transported inside. This in and of itself does not mean the police can arbitrarily search every car they stop. The law requires that the police have "reasonable articulable suspicion" that a violation of the law has occurred to instigate a traffic stop. Then the police must establish probable cause that the car, or its compartments or containers, holds evidence of a crime or contraband in order to justify a warrantless search.

THE SEARCH INCIDENT TO ARREST EXCEPTION



The warrantless search incident to arrest is one of the oldest exceptions to the Fourth Amendment. The courts have repeatedly held that upon arrest, it is reasonable for a police officer to search a person for weapons (in the name of officer safety) and for evidence of a crime (lest it be discarded or destroyed).

Over time the courts have increased the areas that may be searched incident to arrest. Initially this started with the rule that it is reasonable to search the person's body and clothing, and was later expanded to include any objects the person may have in their possession such as wallets, backpacks, purses, etc.

In the 1969 case of *Chimel v. California*, the United States Supreme Court increased the reasonable search area incident to arrest to any place within the person's immediate control at the time they are arrested. This is sometimes referred to as a person's "wingspan." The area was increased based upon the thought that an arrested person could lunge for or grab a weapon or evidence lying nearby.





CAN AN AUTOMOBILE BE SEARCHED INCIDENT TO ARREST?

These two warrantless search exceptions, search incident to arrest and the automobile exception, came together and were examined by the United States Supreme Court in the 1981 case of *Belton v. New York*.

The court set forth a rule that if the police arrest a driver for any reason (traffic violations, DWI, outstanding warrants, possession of narcotics, etc.), the driver, the automobile's passenger compartment and any containers therein can be searched.

This is a synthesis of the "lessened expectation of privacy" from the automobile exception, and the "wingspan" concept from the search incident to arrest exception. This ruling, while vast in its scope, did not alter the requirement that a police officer have probable cause that the trunk of an automobile contains evidence that a crime has been committed or will be committed to justify its warrantless search.

It also did not affect the exception that an impounded automobile can be administratively searched pursuant to the police department's personal property inventory procedure.

For 28 years, police departments throughout the United States used this ruling to search the vehicle passenger compartments of people who are arrested while driving or inside of automobiles. This rule from *Belton* was upheld in the 2004 case of *Thornton v. United States*, wherein the Supreme Court held that even if a person is outside of a car they just exited, when they are arrested, the vehicle may be searched if it is reasonable to believe that it may contain evidence related to the offense for which they are arrested.

Then in 2009, the United States Supreme Court diminished *Belton's* rule in the case of *Arizona v. Gant*. In this case, an individual who had exited and walked away from his car was arrested for driving with a suspended driver's license.

The police then used the search incident to arrest exception to search the passenger compartment of his car and its contents. In the pocket of a jacket left on the back seat, they found a bag of cocaine and charged him with the offense of possession of a controlled substance.

At the time of his arrest, Mr. Gant was clearly standing far away from his car. The Supreme Court held that the police could not use the search incident to arrest exception under these facts. This is because at the time Mr. Gant was arrested, he could not have reached into the vehicle for a weapon or to destroy evidence. Also, there was no reason to believe the vehicle contained evidence relating to his arrest for driving with a suspended license. However, if it can be established that at the time of a person's arrest, the person IS within reaching distance of a weapon in the automobile, OR he is arrested for an offense for which evidence may be found in the vehicle such as a drugs or stolen property, the rules of *Belton* and *Thornton* still apply to the warrantless search.



WHAT HAPPENS AT A TRAFFIC STOP?

Under the Fourth Amendment, a traffic stop is a seizure and therefore must be done by a police officer who has reasonable articulable suspicion that a traffic offense was committed in his presence. The Court went one step further in 2014 in the *Navarette v. California* case stating that a police officer can pull over an individual based on a 9-1-1 anonymous tip that the driver committed a crime. (Justice Scalia noted in his dissent that this decision was “a freedom destroying cocktail.”)

After the police officer stops an automobile they may lawfully request the driver's identification and proof of insurance, check the registration of the vehicle, and check the driver for outstanding warrants.



Further, they may lawfully ask questions for more information, including the purpose of the trip and intended destination; however there is no requirement that questions other than those concerning identification be answered. The police officer may approach the passenger for this information to be given consensually as well, but a police officer must have a reasonable suspicion of criminal activity in order to further question or detain the passenger.

There is no exact time limit for a traffic stop, but it is not supposed to be any longer than is necessary to check for warrants and write the driver a ticket. In order for a police officer to extend the traffic stop past this purpose, he must have reasonable suspicion or probable cause of other criminal activity, such as a belief the driver is intoxicated or smelling the odor of burnt marijuana. Generally the traffic stop is not to be used by the police as a random fishing expedition for other criminal activity.



HOW TO CONDUCT YOURSELF DURING A TRAFFIC STOP

Police officers are trained to expect many different scenarios when making traffic stops, such as a person who could be mentally disturbed or under the influence of drugs or alcohol. Average citizens do not encounter the police every day and while many may find it intimidating to talk to a police officer, it is important to remember we do have rights.

In the event you are confronted by a police officer during a traffic stop, try not to panic. A police officer may interpret your nervousness as "suspicious behavior" even though nervousness alone is not enough for a police officer to develop reasonable suspicion of criminal activity.

Even if you have no clue as to why you are being stopped, pull over to a safe area on the right shoulder or a parking area to the right. If the stop is at night, turn on the passenger compartment dome light. It may put a police officer at ease when walking up to your car since he can see your movements, but remember that it will also illuminate the inside of your car putting its contents in plain view.

Keep your hands on the steering wheel or in some other manner where the police officer can see them. Keep your insurance some place easily accessible, so you do not have to rummage through your glove box. A police officer may incorrectly assume you are reaching for a weapon or may see the contents inside of the compartment.

Ask the police officer why you were stopped but do not make any admissions, in particular to the officer's question "Do you know why I stopped you?" You are only required to identify yourself.

You do not have to answer any other questions the police officer may ask; in particular the question "Is there anything illegal in the car?" However, if you do choose to answer, do not provide any false information.



Since you have been temporarily detained and are not yet in formal custody, the police are not required to tell you that you have the right to remain silent. However, you always have the right to remain silent and not incriminate yourself!

The police may lawfully order you to remain in or exit the vehicle. If the police officer asks you to get out of your vehicle, it is permissible to roll up the windows and lock the doors once you are out. This may make it more difficult for the police to use the search incident to arrest exception if they arrest you for a traffic offense and have no other probable cause to search the automobile.



If you become uncomfortable during the police encounter, politely ask the police officer if you are free to leave. The officer's answer will determine if you are officially being detained and may contribute to the ultimate determination if your rights were violated.

If the police officer asks for permission to search your car, yourself or your belongings, you may lawfully choose not to consent. If you consent to the search or voluntarily make incriminating statements, any violations of your rights by the police will not be actionable, unless it can be argued that these violations caused your consent to not be voluntary.

Above all, be polite yet firm in the assertion of your rights even in the face of threats, promises, or other forms of intimidation by the police officers!

ARMING YOU WITH KNOWLEDGE.

BROUGHT TO YOU BY

