

INVESTIGATIVE DETENTIONS

*“[A]n investigative detention must be temporary and last no longer than is necessary to effectuate the purpose of the stop.”*¹

Of all the investigative procedures utilized by officers on the street, the most common and productive is the detention. “When circumstances demand immediate investigation by the police,” said the Court of Appeal, “the most useful, most available tool for such investigation is general on-the-scene questioning.”²

Asking questions is not all that officers can do. They may require the detainee to identify himself. If there are legitimate officer safety concerns, some protective action might be appropriate such as a felony stop, pat searching the detainee, handcuffing him, even confining him inside a patrol car. Depending on the nature of the investigation, it might be necessary to conduct a showup, run a warrant check, complete a field contact card, and sometimes even transport the detainee to another location.

The procedures officers utilize for each detention will, of course, be different because they depend on the nature of the crime under investigation and how things unfold. For this reason, the courts give officers a good deal of leeway in determining how to carry out their duties.

Still, there are limits. The courts are aware that some detentions are nothing more than “fishing expeditions,” having no real focus or purpose other than to see what might turn up.³ They also know that detentions are sometimes “heavy handed” or unnecessarily intrusive.⁴

To help prevent this from happening, the courts require two things of officers who detain a suspect:

Diligence: They must be diligent in carrying out their duties.

Scope of the detention: They must generally confine their activities to those that were reasonably necessary.⁵

If both requirements are met, the detention is lawful. If not, it becomes a *de facto* arrest at the point officers were dilatory or exceeded the permissible bounds of the detention. If this happens, the stop becomes unlawful at that point unless probable cause existed.⁶

¹ *Florida v. Royer* (1983) 460 US 491, 500.

² *People v. Manis* (1969) 268 Cal.App.2d 653, 665.

³ See *People v. Grace* (1973) 32 Cal.App.3d 447, 453; *People v. Gonsoulin* (1971) 19 Cal.App.3d 270, 274.

⁴ See *Willett v. Superior Court* (1969) 2 Cal.App.3d 555, 558.

⁵ **NOTE:** The detention must also have been justified at the outset, meaning that officers had “reasonable suspicion.” The subject of reasonable suspicion was discussed in detail in the Spring 2002 edition of *Point of View* in the article entitled “Probable Cause,” which can be downloaded from Point of View Online at www.acgov.org/da.

⁶ See *People v. Rivera* (1992) 8 Cal.App.4th 1000, 1006-7; *People v. Soun* (1995) 34 Cal.App.4th 1499, 1516-7; *In re Carlos M.* (1990) 220 Cal.App.3d 372, 384; *People v. Gentry* (1992) 7 Cal.App.4th 1255, 1266-7; *In re Justin B.* (1999) 69 Cal.App.4th 874, 887; *People v. Gorrostieta* (1993) 19 Cal.App.4th 71, 83 [“At some point, a detention can become an arrest if not by actual express designation, then by effect. When the detention exceeds the boundaries of a permissible investigative stop, the detention becomes a *de facto* arrest requiring probable cause.”]; *U.S. v. Shabazz* (5th Cir. 1993) 993 F.2d 431, 437 [“A prolonged investigative detention may be tantamount to a *de facto* arrest, a more intrusive custodial state which must be based upon probable cause rather than mere reasonable suspicion.”]; *U.S. v. Torres-Sanchez* (9th Cir. 1996) 83 F.3d 1123, 1127 [“There is no bright-line for determining when an investigatory stop crosses

A detention does not, however, become a *de facto* arrest merely because someone was able to figure out a way in which it could have been conducted quicker or in a less intrusive manner.⁷ Instead, a *de facto* arrest results only if officers were negligent in failing to recognize and implement an alternate procedure,⁸ keeping in mind that most detentions are “swiftly developing” and that judges “can almost always imagine some alternative means by which the objectives of the police might have been accomplished.”⁹

Before we begin, it should be noted there are two types of detentions that are covered in this edition of *Point of View*. They are:

INVESTIGATIVE DETENTIONS: In this article, we cover investigative detentions (including non-traffic car stops such as DUI’s) that are usually based on reasonable suspicion to believe the detainee committed or is committing a crime.

TRAFFIC STOPS: In the accompanying article, beginning on page **, we cover traffic stops, which are essentially car stops based on reasonable suspicion or probable cause to believe the driver or other occupant has committed a traffic infraction.

Also in this edition, in the article beginning on page **, we discuss the legal status of the passengers in a car stopped for an investigation or traffic violation.

DILIGENCE

As noted, officers who have detained a suspect must carry out their duties with diligence.¹⁰ As the U.S. Supreme Court explained:

the line and becomes an arrest, and this determination may in some instances create difficult line-drawing problems.”].

⁷ **NOTE:** Over the years, some courts have misinterpreted the test as requiring that officers employ the “least intrusive means” of pursuing their investigation. Under this test, it can be argued that a detention is unlawful if a judge or defense attorney can articulate some less intrusive way in which it might have been conducted, which is usually not too difficult. See *United States v. Montoya de Hernandez* (1985) 473 US 531, 542. In any event, the U.S. Supreme Court has repudiated this “least intrusive means” requirement. Instead, as the Court explained, “The question is not simply whether some other alternative was available, but whether the police acted unreasonably in failing to recognize or to pursue it.” *United States v. Sharpe* (1985) 470 US 675, 686-7. ALSO SEE *Atwater v. City of Lago Vista* (2001) 532 US ___ [149 L.Ed.2d 549, 575] [Court notes that the “least-restrictive-alternative limitation” is “generally thought inappropriate in working out Fourth Amendment protection.”]; *People v. Bell* (1996) 43 Cal.App.4th 754, 761, fn.1 [“The Supreme Court, however, has since repudiated any ‘least intrusive means’ test for commencing or conducting an investigatory stop. The question is not simply whether some other alternative was available, but whether the police acted unreasonably in failing to recognize or pursue it.”].

⁸ See *United States v. Sharpe* (1985) 470 US 675, 686-7 [“The question is not simply whether some other alternative was available, but whether the police acted unreasonably in failing to recognize or to pursue it.” were negligent in failing to recognize or to pursue it.”].

⁹ See *United States v. Sharpe* (1985) 470 US 675, 686-7.

¹⁰ See *Florida v. Royer* (1983) 460 US 491, 500 [(A)n investigative detention must be temporary and last no longer than is necessary to effectuate the purpose of the stop.”]; *United States v. Place* (1983) 462 US 696, 709 [(I)n assessing the effect of the length of the detention, we take into account whether the police diligently pursue their investigation.”]; *People v. Soun* (1995) 34 Cal.App.4th 1499, 1520 [30 minute detention OK because the investigating officer “fully accounted for this period of time.”]; *U.S. v. Meza-Corrales* (9th Cir. 1999) 183 F.3d 1116, 1123]; *U.S. v. Campbell* (5th Cir. 1999) 178 F.3d 345, 350 [detention of bank robbery suspect took 10-25 minutes, “not an unreasonable amount of time under the circumstances”]; *Allen v. Los Angeles* (9th Cir. 1995) 66 F.3d 1052 [detention for 24 minutes while officers contacted car owner to determine if car stolen]; *Courson v. McMillan* (11th Cir. 1991) 939 F.2d 1479, 1492 [30-minute detention not unreasonable]; *People v. Bell* (1996) 43 Cal.App.4th 754, 761; *People v. Harris* (1975) 15 Cal.3d 384, 390 [“A detention of an individual which is reasonable at its inception may

In assessing whether a detention is too long in duration to be justified as an investigative stop, we consider it appropriate to examine whether the police diligently pursued a means of investigation that was likely to confirm or dispel their suspicions quickly.¹¹

What's "diligence" in the context of detentions? The Court of Appeal summed it up when it noted, "Each step in the [detention] proceeded logically and immediately from the previous one."¹²

For example, in a case in which six suspects in a robbery-murder were detained by Oakland police for 30 minutes, the court noted that the delay resulted from the fact that the crime occurred in San Jose (which necessitated discussions with SJPD investigators), the nature of the crime made it necessary to implement additional officer-safety precautions, and there were six detainees. As the court pointed out, the investigating officers "fully accounted for this period of time."¹³

Similarly, in *Gallegos v. Los Angeles*¹⁴ the court, in upholding the detention of a burglary suspect, made this comment:

Gallegos makes much of the fact that his detention lasted forty-five minutes to an hour. . . . While the length of Gallegos's detention remains relevant, more important is that [the officers'] actions did not involve any delay unnecessary to their legitimate investigation. Critical to our conclusion that Gallegos was not arrested is that the officers diligently pursued a means of investigation that was likely to confirm or dispel their suspicions quickly.

NO UNREALISTIC SECOND-GUESSING: If, as is almost always the case, the detention was "swiftly developing," the courts "should not indulge in unrealistic second-guessing."¹⁵

NO OUTSIDE TIME LIMITS: There are no set time limits after which a detention becomes a *de facto* arrest.¹⁶ Still, the U.S. Supreme Court has noted, "Obviously, if an

exceed constitutional bounds when extended beyond which is reasonably necessary under the circumstances."]; *People v. Avalos* (1996) 47 Cal.App.4th 1569, 1577 [reasonable to extend detention 15 to 20 minutes for arrival of Spanish-speaking officer]; *In re Carlos M.* (1990) 220 Cal.App.3d 372, 382, fn.4 ["Here, nothing suggests [the officer] dallied. In not more than thirty minutes (and perhaps in less than fifteen minutes) [he] arrived and awakened two sleeping suspects; got them on their feet; attempted to obtain names and identifications; determined a language barrier existed and that they lacked identifications; called to determine the location of the only person (i.e., the victim) who could confirm or dispel his suspicions; conducted a patdown search; handcuffed both suspects; walked them to his car and placed them inside; made a five-minute trip to the hospital; and walked two men, one at a time, to the place where the victim could identify them. [The officer's] actions show commendable dispatch."].

¹¹ *United States v. Sharpe* (1985) 470 US 675, 686.

¹² *Ingle v. Superior Court* (1982) 129 Cal.App.3d 188, 196.

¹³ *People v. Soun* (1995) 34 Cal.App.4th 1499.

¹⁴ (9th Cir. 2002) 308 F.3d 987.

¹⁵ See *United States v. Sharpe* (1985) 470 US 675, 686-7; *U.S. v. Childs* (7th Cir. 2002) 277 F.3d 947, 953 ["The reasonableness of a seizure depends on what the police *do*, not on what they might have done."].

¹⁶ See *U.S. v. \$404,905* (8th Cir. 1999) 182 F.3d 643, 648; *United States v. De Hernandez* (1985) 473 US 531, 543 ["(C)ommon sense and ordinary human experience must govern over rigid [time] criteria."]; *U.S. v. Torres-Sanchez* (9th Cir. 1996) 83 F.3d 1123, 1129 ["'Brevity' can only be defined in the context of each particular case."]; *People v. Gorak* (1987) 196 Cal.App.3d 1032, 1037 ["The United States Supreme Court has refused to adopt any outside time limitation on a lawful detention."]; *People v. Dasilva* (1989) 207 Cal.App.3d 43, 50 ["There is no rigid time limitation imposed on a detention. The court must determine the purpose of the stop as well as the time reasonably needed to effectuate the purpose."]; *United States v. Place* (1983) 462 US 696, 709 ["(T)he brevity of the invasion of the individual's Fourth Amendment interests is an important

investigative stop continues indefinitely, at some point it can no longer be justified as an investigative stop.”¹⁷

DELAY ATTRIBUTABLE TO DETAINEE: Delays resulting from the actions of the detainee or from other circumstances not within the officers’ control will not result in a *de facto* arrest, so long as officers were diligent in responding to them.¹⁸

DELAY TO INVESTIGATE OTHER CRIME: A detention may be prolonged to investigate another crime with which the detainee is suspected if, as the stop progresses, officers develop grounds to detain him for that crime.¹⁹

TERMINATING THE DETENTION: Officers must also be diligent in terminating the detention after they determine there is no further justification for it. In the words of the U.S. Court of Appeals, “A person stopped on reasonable suspicion must be released as soon as the officers have assured themselves that no skullduggery is afoot.”²⁰

SCOPE OF INVESTIGATIVE DETENTIONS

Not only must officers be diligent in what they do, they must do only those things that are reasonably necessary. What’s reasonably necessary? There are essentially three things: (1) ensure officer safety, (2) investigate the matter at hand, and (3) maintain the status quo.²¹ As things develop and circumstances change, officers may of course

factor in determining whether the seizure is so minimally intrusive as to be justified on reasonable suspicion.”]; *U.S. v. Shabazz* (5th Cir. 1993) 993 F.2d 431, 437 [“(A) detention may be of excessively long duration even though the officers have not completed and continue to pursue investigation of the matters justifying its initiation.”]; *People v. Gentry* (1992) 7 Cal.App.4th 1255, 1266 [detention lasting 3½ hours was unlawful mainly because its purpose was not to investigate, but to await the arrival of a search warrant].

¹⁷ *United States v. Sharpe* (1985) 470 US 675, 685.

¹⁸ See *United States v. Sharpe* (1985) 470 US 675, 687-8 [“The delay in this case was attributable almost entirely to the evasive actions of [a second suspect], who sought to elude the police as Sharpe moved his Pontiac to the side of the road.”]; *United States v. Montoya De Hernandez* (1985) 473 US 531, 543 [“Our prior cases have refused to charge police with delays in investigatory detention attributable to the suspect’s evasive actions.”]; *People v. Huerta* (1990) 218 Cal.App.3d 744, 750; *People v. Russell* (2000) 81 Cal.App.4th 96, 102 [“Circumstances which develop during a detention may provide reasonable suspicion to prolong the detention.”].

¹⁹ See *People v. Huerta* (1990) 218 Cal.App.3d 744, 750; *People v. Lingo* (1970) 3 Cal.App.3d 661, 664; *United States v. Sharpe* (1985) 470 US 675, 687-8; *Pendergraft v. Superior Court* (1971) 15 Cal.App.3d 237, 242.

²⁰ *U.S. v. Childs* (7th Cir. 2002) 277 F.3d 947, 952. ALSO SEE *People v. Bello* (1975) 45 Cal.App.3d 970, 973; *Pendergraft v. Superior Court* (1971) 15 Cal.App.3d 237, 242; *U.S. v. Shabazz* (5th Cir. 1993) 993 F.2d 431, 436 [“When the officer is satisfied that the individual is not carrying a gun, the officer may not detain him longer to investigate a charge lacking reasonable suspicion.”]; *U.S. v. McSwain* (10th Cir. 1994) 29 F.3d 558, 561; *U.S. v. Hill* (6th Cir. 1999) 195 F.3d 258, 264 [“Once the purpose of the traffic stop is completed, a motorist cannot be further detained unless something that occurred during the stop caused the officer to have a reasonable and articulable suspicion that criminal activity was afoot.”].

²¹ See *Terry v. Ohio* (1968) 392 US 1, 23 [“The officers were authorized to take such steps as were reasonably necessary to protect their personal safety and to maintain the status quo during the course of the stop.”]; *United States v. Hensley* (1985) 469 US 221, 235 [the officers “were authorized to take such steps as were reasonably necessary to protect their personal safety and to maintain the status quo during the course of the stop.”]; *People v. Manis* (1969) 268 Cal.App.2d 653, 665 [“The purpose of detention is to keep things as they are during the investigation. . . .”]; *U.S. v. Campbell* (5th Cir. 1999) 178 F.3d 345, 348-9 [“In the course of [their] investigation, the officers had two goals: to investigate and to protect themselves during their investigation.”]; *People v. Haugland* (1981) 115 Cal.App.3d 248, 255 [“The whole purpose of a detention . . . is to enable the police to quickly determine whether they should allow the suspect to go about his business or hold him to answer charges.”]; *Gallegos v. Los Angeles* (9th Cir. 2002) 308 F.3d 987,

“graduate their responses to the demands of any particular situation.”²²

Officer-safety measures

All investigative detentions are potentially dangerous. Detainees who think they may be arrested will sometimes panic and attempt to escape by using force—sometimes deadly force. In fact, the U.S. Supreme Court has said it is “too plain for argument” that officer safety concerns during detentions are “both legitimate and weighty.”²³

Accordingly, officers may take whatever action is reasonably necessary for their safety—with emphasis on the word “reasonably.”²⁴ As the U.S. Court of Appeals explained, “[W]e allow intrusive and aggressive police conduct without deeming it an arrest in those circumstances when it is a reasonable response to legitimate safety concerns on the part of the investigating officers.”²⁵ Conversely, a *de facto* arrest may result “if the restraint employed by the police goes beyond that which is reasonably necessary for a detention.”²⁶

Depending on the circumstances, officers may be permitted to do the following.

FELONY CAR STOPS: When officers utilize felony car stop procedures, they usually have probable cause to arrest one or more of the occupants of the vehicle for a serious crime. And because probable cause exists, officers need not worry about converting the stop into a *de facto* arrest.

If, however, officers have only reasonable suspicion to detain one or more of the occupants, the question arises: Is a felony car stop permissible? If so, under what circumstances? The answer is that felony stop procedures are appropriate if officers are aware of specific facts that reasonably indicate the occupants are armed or that they otherwise present a substantial threat of imminent violence.²⁷ For example, in *People v. Soun*²⁸ the court ruled that officers properly utilized felony stop procedures to detain six suspects in a robbery-murder because:

[The officer] concluded that to attempt to stop the car by means suitable to a simple traffic infraction—in the prosecutor’s words, “just pull up alongside and flash your lights and ask them to pull over”—“would not be technically sound as far

991 [“The whole point of an investigatory stop, as the name suggests, is to allow police to investigate.”]; *People v. Soun* (1995) 34 Cal.App.4th 1499, 1516 [“Patently the permissible purpose of a detention is to investigate the suspicion of criminal activity on which the detention was predicated.”].

²² See *United States v. Place* (1983) 462 US 696, 709, fn.10; *United States v. Sharpe* (1985) 470 US 675, 686; *Pendergraft v. Superior Court* (1971) 15 Cal.App.3d 237, 242 [“The significance of the events, discoveries, and perceptions that follow an officer’s first sighting of a candidate for detention will vary from case to case.”].

²³ *Pennsylvania v. Mimms* (1977) 434 US 106, 110.

²⁴ See *United States v. Hensley* (1985) 469 US 221, 235; *People v. Brown* (1985) 169 Cal.App.3d 159, 166; *U.S. v. Del Vizo* (9th Cir. 1990) 918 F.2d 821, 825 [“(A)n investigatory stop will not be converted into an arrest simply when the officers take reasonable measures to neutralize the risk of physical harm and to determine whether the person in question is armed.”].

²⁵ *U.S. v. Meza-Corrales* (9th Cir. 1999) 183 F.3d 1116, 1123.

²⁶ See *People v. Campbell* (1981) 118 Cal.App.3d 588, 595-6.

²⁷ See *U.S. v. Campbell* (5th Cir. 1999) 178 F.3d 345 [“(D)rawn guns and handcuffs do not necessarily convert a detention into an arrest. Nor did it convert the detention into an arrest to leave [one of the suspects] handcuffed during the time it took to investigate [his companion’s] alibi and the serial numbers on the \$20 bills [found in his pocket].”]; *Gallegos v. Los Angeles* (9th Cir. 2002) 308 F.3d 987, 991; *U.S. v. Alvarez* (9th Cir. 1990) 899 F.2d 833, 838; *U.S. v. Buffington* (9th Cir. 1987) 815 F.2d 1292, 1300; *U.S. v. Jacobs* (9th Cir. 1983) 715 F.2d 1343, 1345-6.

²⁸ (1995) 34 Cal.App.4th 1499.

as my safety or safety of other officers.” We cannot fault [the officer] for his reasoning, or for proceeding as he did. In our view the initial stop met the criterion of using the least intrusive means reasonably available under the circumstances.

GET OUT/STAY INSIDE: If officers have detained the driver or any other occupant of a car, they may order the detainee and anyone else in the vehicle to step out.²⁹ This is permitted for two reasons. First, the intrusion is minimal. Second, officers usually have good reasons for wanting one or more of the occupants outside. For example, the U.S. Supreme Court pointed out that “face-to-face confrontation diminishes the possibility, otherwise substantial, that the driver can make unobserved movements; this, in turn, reduces the likelihood that the officer will be the victim of an assault.”³⁰ In addition, it may be unsafe for the officer to speak with the occupants while standing at the driver’s window.³¹

Officers may also order the driver and passengers to remain inside the car. Again, the reason is officer safety. As the Court of Appeal explained, “If the minimal additional intrusion on the personal liberty of the passenger ordered out of the vehicle cannot trump the safety of the officer, then surely the slight inconvenience of ordering the passenger to remain seated can be justified by an officer’s concerns.”³²

POSITIONING THE OCCUPANTS OUTSIDE THE CAR: If the occupants have been ordered out, it is usually reasonable for officers to control their movements by, for example, requiring them to stand or sit at a certain place, either together or separated.

KEEP HANDS IN SIGHT: An officer who has lawfully detained a suspect may order the suspect and his companions to remove their hands from their pockets and otherwise keep their hands in sight. Such an action is permitted whether or not there was reason to believe the suspect or his companions were armed or dangerous.³³

HANDCUFFING: Officers may handcuff a detainee if there is a legitimate need for it. As the Court of Appeal observed, “The fact that a defendant is handcuffed while being detained does not, by itself, transform a detention into an arrest. Instead, the issue is whether the restraint employed exceeded that which was reasonably necessary for the detention.”³⁴ For example, handcuffing is permitted if the detainee was combative or was

²⁹ See *Pennsylvania v. Mimms* (1977) 434 US 106; *Maryland v. Wilson* (1997) 519 US 408, 415 [“We therefore hold that an officer making a traffic stop may order passengers to get out of the car pending completion of the stop.”]; *Ohio v. Robinette* (1996) 519 US 33, 38 [officer lawfully ordered the driver to exit even though he had already decided not to cite him]; *People v. Castaneda* (1995) 35 Cal.App.4th 1222, 1230 [“Requesting a driver to step out of a car after the driver is lawfully detained is a reasonable and minimal intrusion.”].

³⁰ *Pennsylvania v. Mimms* (1977) 434 US 106, 110. ALSO SEE *Maryland v. Wilson* (1997) 519 US 408, 414 [“Outside the car, the passengers will be denied access to any possible weapon that might be concealed in the interior of the passenger compartment.”].

³¹ See *Pennsylvania v. Mimms* (1977) 434 US 106, 111 [“The hazard of accidental injury from passing traffic to an officer standing on the driver’s side of the vehicle may also be appreciable in some situations.”].

³² *People v. Castellon* (1999) 76 Cal.App.4th 1369, 1375. **NOTE:** The court in *Castellon* also noted that whether a passenger is ordered to stay inside or exit the vehicle “is a distinction without a difference.” At p. 1374-5. Ordering the occupants to remain inside is also justified in order to maintain the status quo; i.e., the officer’s command to stay inside is either a minimal intrusion or no intrusion at all because the occupants were inside the car when it was stopped. See *Maryland v. Wilson* (1997) 519 US 408, 414 [“The only change in their circumstances which will result from ordering them out of the car is that they will be outside of, rather than inside of, the stopped car.”].

³³ See *In re Frank V.* (1991) 233 Cal.App.3d 1232, 1239.

³⁴ *In re Carlos M.* (1990) 220 Cal.App.3d 372, 385.

suspected of committing a violent crime.³⁵

DETAINEE CONFINED IN PATROL CAR: A detainee may be confined in a patrol car if reasonably necessary.³⁶ Such a necessity has been found when officers were awaiting the arrival of a robbery victim for a showup,³⁷ and when officers were waiting for a more experienced officer to confirm their suspicion that the detainee was under the influence of drugs.³⁸

DRAWN GUNS: An officer's act of drawing a gun on a detainee will not convert the detention into a *de facto* arrest if such a precaution was reasonably necessary and the gun was reholstered after it was safe to do so.³⁹ For example, in *People v. Campbell*⁴⁰ an officer drew a gun in order to detain a suspected drug dealer, then reholstered it after a pat search revealed he was unarmed. In ruling the encounter was not a *de facto* arrest, the court said:

The officer's concern for his safety also justified his approaching [the suspect] with a drawn weapon When [the suspect] did not react violently to being accosted, [the officer] immediately replaced his gun in his belt before patting down [the suspect]. This conduct did not constitute restraint beyond that which is necessary for temporary detention.

PROTECTIVE SEARCH OF VEHICLE: Officers who have made a car stop may conduct a protective search of the passenger compartment of the vehicle without converting the encounter into an arrest if they reasonably believed a dangerous weapon—even a legal

³⁵ See *People v. Soun* (1995) 34 Cal.App.4th 1499, 1517 [suspects in robbery-murder were handcuffed]; *People v. Brown* (1985) 169 Cal.App.3d 159, 166 [circumstances justified throwing a bank robbery suspect to the ground and handcuffing him]; *People v. Bowen* (1987) 195 Cal.App.3d 269, 274 [“The fact that appellant [a suspect in a purse snatch] was handcuffed while detained awaiting the victim’s arrival does not mean that appellant was under arrest during this time.”]; *People v. Johnson* (1991) 231 Cal.App.3d 1, 14 [“Here, defendant struggled violently with the officers for five minutes. The need for handcuffing was patently justified by concern for officer safety.”]. **Re §148 arrests:** Physical resistance to a detention will ordinarily justify an arrest for resisting, delaying, or obstructing an officer in the performance of his or her duties. See Penal Code §148; *People v. Johnson* (1991) 231 Cal.App.3d 1, 13, fn. 2 [“Given their right to forcibly detain, California precedent arguably would have allowed the officers to *arrest* for flight which unlawfully delayed the performance of their duties.”].

³⁶ See *People v. Rivera* (1992) 8 Cal.App.4th 1000, 1008 [“(P)hysical restraint does not convert a detention into an arrest if the restraint is reasonable under the circumstances.”]; *U.S. v. Parr* (9th Cir. 1988) 843 F.2d 1228, 1229-32 [“Certainly, there is no per se rule that detention in a patrol car constitutes an arrest.”]; *Gallegos v. Los Angeles* (9th Cir. 2002) 308 F.3d 987, 991; *Venegas v. County of Los Angeles* (2002) 104 Cal.App.4th 936, 951 [“(T)here is no per se rule that detention in a patrol car constitutes an arrest.”]. ALSO SEE *U.S. v. Torres-Sanchez* (9th Cir. 1996) 83 F.3d 1123, 1128 [“(S)anchez was never *required* to sit in the patrol car, rather it was suggested to him by [the officer] because of the cold weather conditions.”].

³⁷ *People v. Craig* (1978) 86 Cal.App.3d 905.

³⁸ *People v. Gorak* (1987) 196 Cal.App.3d 1032, 1038 [“The fact that appellant was placed in the patrol car while detained awaiting the arrival of another officer does not mean that appellant was under arrest during this time.”]. ALSO SEE *People v. Lloyd* (1992) 4 Cal.App.4th 724, 734 [“Once it was discovered that someone was still inside the business [in which a silent burglary alarm had been triggered], it was reasonable for the police to temporarily detain Lloyd in the car until they could stabilize the situation to further question Lloyd about his possible involvement in criminal activity.”].

³⁹ See *People v. Glaser* (1995) 11 Cal.4th 354, 366; *People v. Soun* (1995) 34 Cal.App.4th 1499, 1513, 1519; *People v. Brown* (1985) 169 Cal.App.3d 159, 167.

⁴⁰ (1981) 118 Cal.App.3d 588, 595.

weapon such as a hunting knife—was presently inside the passenger compartment.⁴¹

For example, in *Michigan v. Long*⁴² sheriff's deputies who had detained a suspected drunk driver spotted a large hunting knife on the floorboard. When they also spotted an object protruding from under the armrest, they entered the car and seized the object, which was a container of marijuana. The U.S. Supreme Court ruled the search was lawful because the deputies possessed “an articulable and objectively reasonable belief” that the driver was potentially dangerous.

PAT SEARCHING: Pat searching a detainee will not convert the encounter into a *de facto* arrest if officers reasonably believed, (1) the detainee was armed with a conventional weapon or an object that could be used as a weapon, or (2) the detainee constituted a danger to officers or others.⁴³ Such a belief is ordinarily based on circumstantial evidence, such as the following:

NATURE OF CRIME UNDER INVESTIGATION: The suspect was detained for a violent crime, or a crime which commonly involves the use of tools or other objects that could be used as a weapon; e.g., detention for burglary, drug trafficking.⁴⁴

BULGE: There was a bulge consistent with a weapon under the suspect's clothing.⁴⁵

FURTIVE GESTURE: Although a furtive gesture will not, in and of itself, justify a pat search,⁴⁶ it may if the gesture was reasonably interpreted as an attempt by the detainee to hide or retrieve a conventional or virtual weapon, or the officer reasonably believed the movement had “guilty significance.”⁴⁷

⁴¹ See *People v. King* (1989) 216 Cal.App.3d 1237; *People v. Molina* (1994) 25 Cal.App.4th 1038, 1042; *People v. Lafitte* (1989) 211 Cal.App.3d 1429, 1433; *People v. Williams* (1988) 45 Cal.3d 1268, 1303.

⁴² (1983) 463 US 1032.

⁴³ See *Terry v. Ohio* (1968) 392 US 1, 27-8; *Ybarra v. Illinois* (1979) 444 US 85, 93-4; *Adams v. Williams* (1972) 407 US 143; *People v. Williams* (1992) 3 Cal.App.4th 1100, 1104; *In re Frank V.* (1991) 233 Cal.App.3d 1232, 1240; *People v. Dickey* (1994) 21 Cal.App.4th 952, 956.

⁴⁴ See *Terry v. Ohio* (1968) 392 US 1, 28 [robbery]; *People v. Stone* (1981) 117 Cal.App.3d 15, 19 [strong-arm robbery]; *People v. Gonzales* (1998) 64 Cal.App.4th 432, 439 [armed robbery]; *People v. Orozco* (1981) 114 Cal.App.3d 435 [shots fired]; *Adams v. Williams* (1972) 407 US 143 [possession of concealed gun]; *People v. Castaneda* (1995) 35 Cal.App.4th 1222, 1230 [burglary]; *People v. Vermouth* (1971) 20 Cal.App.3d 746, 753 [car theft]; *People v. Lee* (1987) 194 Cal.App.3d 975, 989-93 [drug trafficking]; *People v. Thurman* (1989) 209 Cal.App.3d 817, 822 [drug trafficking]; *People v. Simpson*, (1998) 65 Cal.App.4th 854, 862 [drug trafficking]; *People v. Limon* (1993) 17 Cal.App.4th 524, 535 [drug trafficking]; *People v. Samples* (1996) 48 Cal.App.4th 1197, 1209 [drug trafficking]; *People v. Glaser* (1995) 11 Cal.4th 354, 367-8 [drug trafficking]; *People v. Gallegos* (2002) 96 Cal.App.4th 612, 629 [drug trafficking].

⁴⁵ See *Pennsylvania v. Mimms* (1977) 434 US 106, 111-2; *People v. Brown* (1985) 169 Cal.App.3d 159, 165-6; *People v. Allen* (1975) 50 Cal.App.3d 896, 901; *People v. Snyder* (1992) 11 Cal.App.4th 389, 393 [“(T)he visible bulge created by the bulk of the liquor bottle announced to [the officer] the potential of a weapon.”].

⁴⁶ See *People v. Superior Court (Kiefer)* 3 Cal.3d 807, 827 [“(P)olice reliance on so-called ‘furtive movements’ has on occasion been little short of a subterfuge. . . .”]; *Kaplan v. Superior Court* (1971) 6 Cal.3d 150, 154.

⁴⁷ See *In re John C.* (1978) 80 Cal.App.3d 814, 819, fn.3; *People v. King* (1989) 216 Cal.App.3d 1237 [“(I)n addition to [the driver's] movement, we have the contemporaneous sound of metal on metal and the officer's fear created by the increased level of gang activity in the area.”]; *People v. Superior Court (Brown)* (1980) 111 Cal.App.3d 948, 956 [“(D)efendant was holding his hands clasped together in front of a bulge in the waistband in the middle of his waist. [The officer] thought defendant was trying to hide a weapon.”]; *People v. Woods* (1970) 6 Cal.App.3d 832, 838 [hand of “shots fired” suspect concealed in jacket pocket]; *In re Glenn R.* (1970) 7 Cal.App.3d 558 [Defendant “was keeping his right side turned from the officer's view and appeared to have his right hand in his jacket pocket.”]; *In re John C.* (1978) 80 Cal.App.3d 814, 819 [“(T)he officers saw

SUDDEN MOVEMENT: Detainee made a sudden movement that was reasonably interpreted as a danger signal.⁴⁸

HOSTILE, AGITATED: Detainee was overtly hostile toward officers or was highly-agitated.⁴⁹

HISTORY OF HOSTILITY: Although not presently hostile, the detainee had a history of hostility toward officers.⁵⁰

CRIMINAL HISTORY, GANG AFFILIATIONS: A detainee's criminal history (especially crimes involving violence or weapons) and criminal gang affiliations are both relevant.⁵¹

CRIME/GANG PROBLEMS: The fact that the detention occurred in an area where crime, gang, or drug problems are prevalent is a factor the courts will consider in determining whether a pat search is justified.⁵² But it is not enough, in and of itself,

appellant reach into the back of his waistband and secrete in his hands an object which he had retrieved”]; *People v. Wigginton* (1973) 35 Cal.App.3d 732, 737 [“(The officer saw) defendant’s left hand above his shoulder but his right hand remained near the right hand pocket of his jacket”]; *People v. Clayton* (1970) 13 Cal.App.3d 335 [passenger in a car stopped for a traffic violation “lifted himself up from the seat with both arms in his rear portion of his body behind his back, both arms went up and down rapidly.”].

⁴⁸ See *People v. Rosales* (1989) 211 Cal.App.3d 325 [“When defendant [a suspected heroin dealer] suddenly put his hand into the bulging pocket, [the officer] reasonably believed he was, or could be, reaching for a weapon.”]; *People v. Lee* (1987) 194 Cal.App.3d 975 [“When defendant [a suspected heroin dealer] turned toward the patrol car and placed his hand inside his jacket, [the officer] believed that he was reaching for a weapon.”]; *People v. Atmore* (1970) 13 Cal.App.3d 244 [“Just after [the officer] started the search around [a murder suspect’s] waistband, [the suspect] abruptly grabbed for his outside upper jacket pocket.”]; *People v. Superior Court (Holmes)* (1971) 15 Cal.App.3d 806 [“When the officer approached the defendant [who appeared to be drunk] the defendant reached into his right rear pocket and appeared to be trying to get something out, and it was a jerking motion as though he were trying desperately to get something out of his pocket.”]; *People v. Flores* (1979) 100 Cal.App.3d 221 [“Upon the officers’ approach, defendant [a fugitive] lunged forward thrusting his right hand into one of the [canvas] bag’s open pockets.”].

⁴⁹ See *In re Michael S.* (1983) 141 Cal.App.3d 814 [Suspect “acted very nervous, started breathing very rapidly, hyperventilating, and became boisterous and angry and very antagonistic [and] clenched and unclenched his fists” and became “borderline combative.”].

⁵⁰ See *Amacher v. Superior Court* (1969) 1 Cal.App.3d 150 [officer “had personally had words with petitioner when he stopped him for a traffic violation. He knew that petitioner had had numerous hostile run-ins with other officers, and that petitioner had little or no respect for law enforcement officers.”].

⁵¹ See *People v. Methy* (1991) 227 Cal.App.3d 349, 358; *In re Stephen L.* (1984) 162 Cal.App.3d 257, 260; *People v. Wright* (1988) 206 Cal.App.3d 1107, 1112; *People v. Bush* (2001) 88 Cal.App.4th 1048 [six-year old record for illegal possession of a weapon by a felon justified a vehicle protective search]; *U.S. v. Flett* (8th Cir. 1986) 806 F.2d 823 [suspect was known to be an “enforcer” for a violent motorcycle gang].

⁵² See *Illinois v. Wardlow* (2000) 528 US 119, 124 [“But officers are not required to ignore the relevant characteristics of a location in determining whether the circumstances are sufficiently suspicious to warrant further investigation.”]; *People v. Limon* (1993) 17 Cal.App.4th 524, 534 [“The connection between weapons and an area can provide further justification for a patsearch.”]; *In re Frank V.* (1991) 233 Cal.App.3d 1232, 1241; *People v. King* (1989) 216 Cal.App.3d 1237, 1241 [“(T)he fact that an area involves increased gang activity may be considered if it is relevant to an officer’s belief the detainee is armed and dangerous. While this factor alone may not justify a weapon search, combined with additional factors it may.”]; *In re Stephen L.* (1994) 162 Cal.App.3d 257, 260 [“Failure to cursorily search suspects for weapons in a confrontation situation in an area where gang activity usage is known from the officers’ past experience would be most careless.”]. **NOTE:** The court in *People v. King* (1989) 216 Cal.App.3d

to justify a patdown.⁵³

UNDER THE INFLUENCE: Detainee's behavior was unpredictable because he appeared to be under the influence of alcohol or drugs.⁵⁴

OFFICERS OUTNUMBERED: Although it is not a circumstance that will automatically justify a pat search, the fact that officers were outnumbered by suspects is often noted by the courts.⁵⁵

DARKNESS: The fact that a detention occurred in a dark or relatively dark place is a circumstance that may indicate increased danger if the darkness made it difficult for officers to see the detainee's hands, movements by the detainee's companions (if any), or potential weapons nearby.⁵⁶

Use of force

Officers seldom use force against detainees because, when force is necessary, there is usually probable cause to arrest, at least for resisting.⁵⁷ In any event, the use of force will not transform a lawful detention into an unlawful *de facto* arrest if the use of force was reasonably necessary.⁵⁸ As the court stated in *In re Gregory S.*:

Officer Flores' action in holding appellant's arm to prevent his departure was within his authority to detain. It is implicit in a lawful detention that the person detained is not free to leave at will and may be kept in the officer's presence by physical restraint, threat of force or assertion of authority.⁵⁹

Confirming identity

1237, 1241 noted it is not necessary for officers or prosecutors to prove the suspect was, *in fact*, a member of a gang.

⁵³ See *Maryland v. Buie* (1990) 494 US 325, 334, fn.2 ["Even in high crime areas, where the possibility that any given individual is armed is significant, *Terry* requires reasonable, individualized suspicion before a frisk for weapons can be conducted."]; *U.S. v. Brown* (7th Cir. 1999) 188 F.3d 860, 865 ["The police do not have *carte blanche* to pat down anyone in a dangerous neighborhood."]; *In re Marcellus L.* (1991) 229 Cal.App.3d 134, 138, fn.2.

⁵⁴ See *Michigan v. Long* (1983) 463 US 1032, 1050; *People v. Avila* (1997) 58 Cal.App.4th 1069, 1074; *U.S. v. Tharpe* (5th Cir. 1976) 536 F.2d 1098, 1100; *U.S. v. Salas* (9th Cir. 1989) 879 F.2d 530, 535.

⁵⁵ See *People v. Limon* (1993) 17 Cal.App.4th 524, 531 ["(The officers) were outnumbered not only by the three suspects but also by the other people in the immediate area" which was "known for gang activity, violence, and drugs."]; *In re Stephen L.* (1984) 162 Cal.App.3d 257; *People v. Samples* (1996) 48 Cal.App.4th 1197, 1210; *People v. Suennen* (1980) 114 Cal.App.3d 192, 199; *U.S. v. Tharpe* (5th Cir. 1976) 536 F.2d 1098, 1100 ["(The officer) was alone, at night, in a poorly lit area, facing three men who had evidently been drinking."].

⁵⁶ See *Ybarra v. Illinois* (1979) 444 US 85, 93 [in ruling a pat search was not warranted, the Court noted, among other things, "the lighting was sufficient for [the officers] to observe the customers."]; *People v. Samples* (1996) 48 Cal.App.4th 1197, 1210-1.

⁵⁷ See Penal Code §148(a); *People v. Johnson* (1991) 231 Cal.App.3d 1, 13, fn.2; *In re Gregory S.* (1980) 112 Cal.App.3d 764, 778.

⁵⁸ See *People v. Rivera* (1992) 8 Cal.App.4th 1000, 1008 ["(P)hysical restraint does not convert a detention into an arrest if the restraint is reasonable under the circumstances."]; *People v. Johnson* (1991) 231 Cal.App.3d 1, 14 ["If suspects could convert detentions into arrests by their own flight or violence, sophisticated or simply violence-prone suspects might never be detained on less than probable cause, an absurd result."]; *People v. Taylor* (1986) 178 Cal.App.3d 217, 227, fn.7 ["The weight of recent authority holds that police officers have a right to use force, including the blocking of a vehicle and the display of a weapon, to accomplish an otherwise lawful investigatory stop or detention provided the force is reasonable in the circumstances to protect the officers or members of the public."]; *People v. Brown* (1985) 169 Cal.App.3d 159, 166-7.

⁵⁹ (1980) 112 Cal.App.3d 764, 778.

Officers who are detaining a suspect have a right to determine and confirm the detainee's identity.⁶⁰ As the Court of Appeal observed:

Without question, an officer conducting a lawful [detention] must have the right to [ask the suspect to identify himself], otherwise the officer's right to conduct an investigative detention would be a mere fiction. ¶ As part of this inquiry, the police officer may require the suspect to produce proof of identification, if he has it.⁶¹

If the detainee fails or refuses to identify himself, there are certain things officers may do. For example, a detainee who admits he possesses ID but refuses to show it to officers is in violation of Penal Code §148 because he is intentionally delaying the officer in the performance of the officer's duties.⁶² If the detainee says he doesn't have any ID in his possession, or if he furnishes ID that reasonably appears to be false, officers may expand the permissible scope of the detention to include ascertaining and confirming his ID.⁶³ In addition, a detainee's refusal to identify himself is a relevant circumstance in determining the existence of probable cause to arrest for the crime under investigation.⁶⁴

If the detainee denies having written ID but is carrying a wallet, officers may order him to look through the wallet while they watch to determine if it contains identification.⁶⁵ Alternatively, officers may seize the wallet and search it themselves for the limited purpose of locating ID documentation.⁶⁶

If the detainee was driving a vehicle when he was stopped, and if he failed or refused to furnish ID, officers may search the vehicle for ID, although the search must be limited to places in which ID is usually found; i.e., the glove box, over the sun visor, and under

⁶⁰ See *People v. Long* (1987) 189 Cal.App.3d 77, 87 ["To accept the contention that the officer can stop the suspect and request identification, but that the suspect can turn right around and refuse to provide it, would reduce the authority of the officer . . . to identify a person lawfully stopped by him to a mere fiction. Unless the officer is given some recourse in the event his request for identification is refused, he will be forced to rely either upon the good will of the person he suspects or upon his own ability to simply bluff that person into thinking that he actually does have some recourse." Quoting from *Wisconsin v. Flynn* (1979) 285 NW2d 710, 717-8]; *People v. Rios* (1983) 140 Cal.App.3d 616, 621; *Berkemer v. McCarty* (1984) 468 US 420, 439 [officers "may ask the detainee a moderate number of questions to determine his identity"]; *People v. Vermouth* (1971) 20 Cal.App.3d 746, 752; *In re Gregory S.* (1980) 112 Cal.App.3d 764, 777; *People v. Valencia* (1993) 20 Cal.App.4th 906, 919 ["(The officer) was within his discretion in insisting on documentation of who [the driver] was, rather than simply relying on the word of [his passengers]."]; *People v. Rios* (1983) 140 Cal.App.3d 616, 621 ["And where there is such a right to so detain, there is a companion right to request, and obtain, the detainee's identification."]; *People v. Hart* (1999) 74 Cal.App.4th 479, 488 ["Once detained, the defendant was obligated to identify herself."].

⁶¹ *People v. Loudermilk* (1987) 195 Cal.App.3d 996, 1002.

⁶² See *People v. Muhammed C.* (2002) 95 Cal.App.4th 1325; *People v. Cooks* (1967) 58 Cal.Rptr. 550 [defendant violated Penal Code §148 when he told a detainee not to ID himself to police].

⁶³ *People v. Huerta* (1990) 218 Cal.App.3d 744, 750 ["Once defendant had provided false information which needed to be checked further, the officers had reason to extend the detention."]; *Ingle v. Superior Court* (1982) 129 Cal.App.3d 188, 196 ["The initial delay beyond that normally needed to cite a speeding motorist was caused by petitioner when she falsely identified herself and withheld her driver's license."].

⁶⁴ See *People v. Loudermilk* (1987) 195 Cal.App.3d 996, 1002.

⁶⁵ See *People v. Long* (1987) 189 Cal.App.3d 77, 88; *People v. Rios* (1983) 140 Cal.App.3d 616, 621. ALSO SEE *People v. Vermouth* (1971) 20 Cal.App.3d 746, 752 ["When the driver was unable to produce the registration certificate and said the car belonged to someone else, it was reasonable and proper for the officers to look in the car for the certificate."].

⁶⁶ *People v. Loudermilk* (1987) 195 Cal.App.3d 996, 1002-4; *Ingle v. Superior Court* (1982) 129 Cal.App.3d 188; *People v. Faddler* (1982) 132 Cal.App.3d 607.

the front seat.⁶⁷ Officers may also ask a detainee's companion for ID if it is reasonably necessary to carry out the purpose of the detention.⁶⁸

Questioning the detainee

The most direct way for officers to confirm or dispel their suspicions is usually to question the detainee.⁶⁹ It doesn't necessarily matter whether he tells the truth, tells nothing but lies, or gives a bit of both. Provable lies, unbelievable stories, inconsistencies, and dubious explanations can be just as incriminating as admissions.⁷⁰ This is why the Court of Appeal described the questioning of detainees as "the great engine of the investigation":

When circumstances demand immediate investigation by the police, the most useful, most available tool for such investigation is general on-the-scene questioning, designed to bring out the person's explanation or lack of explanation of the circumstances which aroused the suspicion of the police, and enable the police to quickly determine whether they should allow the suspect to go about his business or hold him to answer charges.⁷¹

As we will now explain, there are four limitations to the questioning of detainees.

DILIGENCE: When questioning detainees, officers must be diligent. To put it another way, the right to question detainees does not constitute a right to question them indefinitely. Consequently, if a court concludes that the questioning took too long, the detention may be deemed a *de facto* arrest.⁷² What's "too" long? It depends on the surrounding circumstances, including the complexity and seriousness of the crime and the extent to which the detainee was evasive or tight-lipped.

RELEVANCE: As a general rule, questioning must be relevant to the legal justification for the stop.⁷³ In the words of the Court of Appeal, officers "may not conduct an

⁶⁷ See *In re Arturo D.* (2002) 27 Cal.4th 60, 78-83; *People v. Webster* (1991) 54 Cal.3d 411, 431; *People v. Chavers* (1983) 33 Cal.3d 462, 470; *People v. Turner* (1994) 8 Cal.4th 137, 182; *People v. Hart* (1999) 74 Cal.App.4th 479, 490; *People v. Fadder* (1982) 132 Cal.App.3d 607, 610.

⁶⁸ See *People v. Grant* (1990) 217 Cal.App.3d 1451, 1459; *People v. Spicer* (1984) 157 Cal.App.3d 213.

⁶⁹ See *People v. Manis* (1969) 268 Cal.App.2d 653, 661 ["The information needed by the police to make an intelligent decision on street detention is ordinarily obtainable only from the suspect's answers."].

⁷⁰ See *People v. Carrillo* (1995) 37 Cal.App.4th 1662, 1670 ["Consciousness of guilt is shown by fabrications which, like devious alibis, are apparently motivated by fear of detection, or which, like devious explanations of the possession of stolen goods, suggest that there is no honest explanation for the incriminating circumstances."]; *People v. Memro* (1995) 11 Cal.4th 786, 843 ["patently inconsistent statements on such a vital matter as the whereabouts of [the victim] near the time he vanished had no discernible innocent meaning and strongly indicated consciousness of guilt."].

⁷¹ *People v. Manis* (1969) 268 Cal.App.2d 653, 665. ALSO SEE *People v. Loudermilk* (1987) 195 Cal.App.3d 996, 1002 [asking the detainee "his reason for being in the area" is usually one of the first questions to be asked].

⁷² See *Michigan v. Summers* (1981) 452 US 692, 700, fn.12]; *People v. Rivera* (1992) 8 Cal.App.4th 1000, 1006-7 ["(A)n investigative detention may, at some point, become so overly intrusive that it can no longer be characterized as a minimal intrusion designed to confirm quickly or dispel the suspicions which justified the initial stop."]; *Ganwich v. Knapp* (9th Cir. 2003) ___ F.3d ___ [employees of suspect-business were detained from 2-5 hours and were told they would not be released until they submitted to interrogation].

⁷³ See *U.S. v. Childs* (7th Cir. 2002) 277 F.3d 947, 952 ["Questioning that prolongs the detention, yet cannot be justified by the purpose of such an investigatory stop, is unreasonable under the fourth amendment."]; *In re James D.* (1987) 43 Cal.3d 903, 915 ["Questioning must, of course, be strictly limited to the purpose of the stop."].

exploratory interrogation designed to elicit incriminating information wholly unrelated to the matter at hand.”⁷⁴ Although this issue arises mainly when officers have questioned a suspect during a pretext traffic stop, it would also apply to investigatory detentions when, for instance, grounds to detain the suspect for an investigation into a minor crime is used to question him about a more serious crime.

There is, however, no bright line separating permissible and impermissible extraneous questioning.⁷⁵ Still, this much seems clear: An investigative detention will not automatically become unlawful the moment an officer inquires into a matter that does not directly pertain to the crime under investigation if the inquiry was fairly brief.⁷⁶ Nor will a detention be invalidated on grounds that officers engaged in “conventional pleasantries” or “small talk.”⁷⁷ Finally, there should be no problem if the extraneous questioning was conducted while officers were doing other things that were reasonably necessary, such as awaiting the results of a warrant check or while conducting a consent search.⁷⁸

MIRANDA: Although investigative detentions necessarily result in some restriction on their freedom, detainees are not automatically “in custody” for *Miranda* purposes.⁷⁹ This is because the atmosphere surrounding most detentions does not usually generate the degree of compulsion to speak which the *Miranda* procedure was designed to alleviate.⁸⁰ A detainee may, however, be deemed “in custody” if the detention had

⁷⁴ *People v. Grace* (1973) 32 Cal.App.3d 447, 452-3.

⁷⁵ See, for example, *People v. Bell* (1996) 43 Cal.App.4th 754, 767 [court suggested that extraneous questioning might be permitted if it does not extend the usual amount of time for a stop]. COMPARE *Williams v. Superior Court* (1985) 168 Cal.App.3d 349, 358 [questioning about unrelated matters is not permitted merely because the overall length of the detention was no longer than was usual].

⁷⁶ See *U.S. v. Childs* (7th Cir. 2002) 277 F.3d 947 954 [“Questions that hold potential for detecting crime, yet create little or no inconvenience, do not turn reasonable detention into unreasonable detention. They do not signal or facilitate oppressive police tactics that may burden the public—for all suspects (even the guilty ones) may protect themselves fully by declining to answer.”].

NOTE: The court in *Childs* pointed out that its decision is supported by language in the U.S. Supreme Court’s ruling in *Ohio v. Robinette* (1996) 519 US 33: “*Robinette* thus approves exactly what *Childs* says may not occur: Questions during a routine traffic stop that do not concern the purpose of the stop (and are not supported by any other suspicion), yet extend the stop’s duration.”

⁷⁷ See *People v. Bell* (1996) 43 Cal.App.4th 754, 768 [“Officer David’s questions about where [the driver] was coming from and what he had been doing were unintrusive and nonaccusatory. They were no more than conventional pleasantries, or small talk.”]; *People v. Brown* (1998) 62 Cal.App.4th 493, 499 [“One minute of generalized questioning during a routine traffic stop is not unreasonable.”].

⁷⁸ See *Michigan v. Summers* (1981) 452 US 692, 700, fn.12 [questioning may become unreasonable if it “makes the period of detention unduly long.”]; *People v. Bell* (1996) 43 Cal.App.4th 754, 767 [court suggested that extraneous questioning might be permitted if it does not extend the usual amount of time for a stop]. **BUT ALSO SEE** *Williams v. Superior Court* (1985) 168 Cal.App.3d 349, 358 [questioning about unrelated matters is not permitted merely because the overall length of the detention was no longer than was usual].

⁷⁹ See *Berkemer v. McCarty* (1984) 468 US 420, 439-40; *People v. Farnam* (2002) 28 Cal.4th 107, 180; *Pennsylvania v. Bruder* (1988) 488 US 9; *In re Victor B.* (1994) 24 Cal.App.4th 521, 524.

⁸⁰ See *People v. Manis* (1969) 268 Cal.App.2d 653, 667 [“Temporary detention only slightly resembles custody, ‘as the mist resembles the rain.’”]; *Berkemer v. McCarty* (1984) 468 US 420, 439-40; *People v. Vasquez* (1993) 14 Cal.App.4th 1158, 1162-4; *People v. Gravatt* (1971) 22 Cal.App.3d 133, 138 [asking detainee if he had ever “done time”]; *People v. Carvajal* (1988) 202 Cal.App.3d 487, 497; *People v. Haugland* (1981) 115 Cal.App.3d 248, 256; *People v. Sjosten* (1968) 262 Cal.App.2d 539, 545-6.

become lengthy or coercive, or if there were other circumstances that indicated the detainee was under arrest.⁸¹

NOT REQUIRED TO ANSWER: A detainee cannot be required to answer the officers' questions.⁸²

Consent searches

Officers who are conducting an investigative detention may certainly seek the detainee's consent to search.⁸³ And if he voluntarily consents, the permissible length of the detention is extended for whatever period of time is reasonably necessary to conduct the search.⁸⁴

The legal issues that are likely to arise are whether the consent was voluntary, whether officers reasonably believed the detainee had the authority to consent, and whether officers limited their search to those places and things they reasonably believed the detainee authorized them to search.⁸⁵ As we discuss in the accompanying article on traffic stops, there are additional issues that may arise when officers seek consent to search from the occupants of a car stopped for a traffic violation.

Transporting the detainee

As a general rule, a detention will be converted into a *de facto* arrest if the detainee was transported away from the scene of the detention; e.g., to the crime scene or the police station. This is because the act of moving a detainee to some other location is much more akin to an arrest than a detention.⁸⁶ Plus, there are usually less intrusive means of accomplishing the officers' objective.⁸⁷

There are, however, two exceptions to this rule. Specifically, officers may transport

⁸¹ See *People v. Manis* (1969) 268 Cal.App.2d 653, 669; *Berkemer v. McCarty* (1984) 468 US 420, 440; *People v. Whitfield* (1996) 46 Cal.App.4th 947 [handcuffed detainee was "in custody"]; *People v. Taylor* (1986) 178 Cal.App.3d 217, 229; *People v. Hubbard* (1970) 9 Cal.App.3d 827, 833; *People v. Salinas* (1982) 131 Cal.App.3d 925, 935-6; *People v. Lopez* (1985) 163 Cal.App.3d 602, 607-8; *People v. Patterson* (1979) 88 Cal.App.3d 742, 747; *In re Victor B.* (1994) 24 Cal.App.4th 521, 524-5; *People v. McLean* (1970) 6 Cal.App.3d 300, 306.

⁸² See *Berkemer v. McCarty* (1984) 468 US 420, 439-40 [(An officer who has detained a suspect) may ask the detainee a moderate number of questions to determine his identity and to try to obtain information confirming or dispelling the officer's suspicions. But the detainee is not obliged to respond. And, unless the detainee's answers provide the officer with probable cause to arrest him, he must then be released.]

⁸³ See *Schneckloth v. Bustamonte* (1973) 412 US 218, 232 ["The circumstances that prompt the initial request to search may develop quickly or be a logical extension of investigative police questioning."].

⁸⁴ **NOTE:** The other issues pertaining to consent searches, such as voluntariness and scope, were covered in the article entitled "Consent Searches" in the Fall 2001 issue of *Point of View* which can be downloaded from Point of View Online at www.acgov.org/da.

⁸⁵ **NOTE:** This subject was discussed in the article entitled "Consent Searches" in the Fall 2001 *Point of View* which can be downloaded from our website, www.acgov.org/da.

⁸⁶ See *Hayes v. Florida* (1985) 470 US 811, 815 [Court notes that probable cause or judicial authorization is required for "transportation to and investigative detention at the station house"]; *Dunaway v. New York* (1979) 442 US 200, 212-3 [suspect unlawfully transported to police station for questioning]; *People v. Harris* (1975) 15 Cal.3d 384, 391; *People v. Gonsoulin* (1971) 19 Cal.App.3d 270, 274; *People v. Farley* (1979) 90 Cal.App.3d 851, 862. COMPARE *People v. Daugherty* (1996) 50 Cal.App.4th 275, 287 [not unlawful to transport detainee 60 yards to airport police office].

⁸⁷ See *People v. Harris* (1975) 15 Cal.3d 384, 391; *In re Carlos M.* (1990) 220 Cal.App.3d 372, 383. COMPARE *People v. Gatch* (1976) 56 Cal.App.3d 505, 509 [alternatives to transporting were not practical].

the detainee if, (1) he voluntarily consented,⁸⁸ or (2) there were circumstances that made it reasonably necessary to do so.⁸⁹

In determining what's reasonably necessary, the courts balance the strength of the need to transport against the distance traveled and the amount of time it took. For example, if a hostile crowd was gathering at the detention site it would be reasonable to transport the detainee a short distance to a location where the detention could be conducted safely.⁹⁰

Similarly, in *People v. Soun*⁹¹ the court ruled it was reasonable for officers to transport six suspects in a robbery-murder to a parking lot three blocks away because the officers reasonably believed the detention would be lengthy, and it was necessary to detain the suspects in separate patrol cars which were blocking the street. Said the court, "A three-block transportation to an essentially neutral site for these rational purposes did not operate to elevate [the suspects'] custodial status from detention to arrest."

Showups

The showup procedure is commonly used when, (1) the crime under investigation just occurred or occurred fairly recently; and (2) it was an I.D. crime, meaning it's apparent a crime occurred, the only issue is whether the detainee was the perpetrator. Under such circumstances it is sometimes possible for officers to confirm or dispel their suspicions quickly by having the victim or an eyewitness view the detainee at a showup. And although showups are somewhat suggestive (because the detainee does not appear in a group), they are a useful and accepted investigative tool. As the Court of Appeal observed:

A prompt on-the-scene confrontation between a suspect and a witness enables the police to exclude from consideration innocent persons so a search for the real perpetrator can continue while it is reasonably likely he is still in the immediate area.⁹²

There are essentially three legal issues that may arise when officers detain a suspect for a showup: (1) Were officers diligent in arranging the showup? (2) If the suspect was transported to some other location for the showup, was it reasonably necessary to do so? (3) Was the showup unduly suggestive?

DILIGENCE: Officers must not delay in arranging and conducting showups.⁹³ Still, delays are often unavoidable. For example, paramedics may be treating the victim at the crime scene, or no officers may be presently available to transport the witness because of other pressing calls. In any event, a delay for the purposes of conducting a showup will not invalidate a detention so long as there were good reasons for the delay, and officers

⁸⁸ See *Ford v. Superior Court* (2001) 91 Cal.App.4th 112, 125 ["The Fourth Amendment does not prevent a person from agreeing to accompany officers to the police station and remain there for interrogation."]; *In re Gilbert R.* (1994) 25 Cal.App.4th 1121, 1125-6; *People v. Singer* (1990) 226 Cal.App.3d 23, 46; *People v. Gatch* (1976) 56 Cal.App.3d 505, 510, fn.1.

⁸⁹ See *Florida v. Royer* (1983) 460 US 491, 504 ["(T)here are undoubtedly reasons of safety and security that would justify moving a suspect from one location to another during an investigatory detention"]; *People v. Gatch* (1976) 56 Cal.App.3d 505, 509; *People v. Courtney* (1970) 11 Cal.App.3d 1185, 1192. COMPARE *People v. Campbell* (1981) 118 Cal.App.3d 588, 596-7 [insufficient justification for transport]; *In re Dung T.* (1984) 160 Cal.App.3d 697, 713-6.

⁹⁰ See *People v. Courtney* (1970) 11 Cal.App.3d 1185, 1192; *Florida v. Royer* (1983) 460 US 491, 504 ["(T)here are undoubtedly reasons for safety and security that would justify moving a suspect from one location to another during an investigatory detention"].

⁹¹ (1995) 34 Cal.App.4th 1499.

⁹² *People v. Cowger* (1988) 202 Cal.App.3d 1066, 1072.

⁹³ See *People v. Bowen* (1987) 195 Cal.App.3d 269; *People v. Harris* (1975) 15 Cal.3d 384, 390; *Florida v. Royer* (1983) 460 US 491, 500; *United States v. Sharpe* (1985) 470 US 675, 685.

were diligent under the circumstances.

A case in point is *People v. Bowen*⁹⁴ where SFPD officers detained two suspects in a purse snatch that occurred 30 minutes earlier. The officers “immediately radioed their dispatcher to request that the victim be transported to the detention scene” for a showup. The officers also asked the dispatcher to give them the estimated time of arrival of the victim. The dispatcher reported that “the unit transporting the victim was caught in traffic and would arrive shortly.”

Although the suspects were detained in handcuffs for 25 minutes before the victim arrived and identified them, the court ruled the detention was not unduly prolonged because the officers’ communications with the dispatcher proved they had acted diligently under the circumstances.

TRANSPORTING THE DETAINEE: As noted earlier, a *de facto* arrest usually results if the detainee was transported unnecessarily from the detention site. In the context of showups, it is usually reasonably necessary to transport the detainee to the victim’s location if the victim was injured during the commission of the crime and is being treated at the crime scene or at a hospital.⁹⁵

In addition, there is authority for transporting the detainee a short distance for a showup if it would save time, especially if a prolonged detention might otherwise result. As the California Supreme Court observed, “[T]he surrounding circumstances may reasonably indicate that it would be less of an intrusion upon the suspect’s rights to convey him speedily a few blocks to the crime scene, permitting the suspect’s early release rather than prolonging unduly the field detention.”⁹⁶

SUGGESTIVENESS: Showups are, by their very nature, a somewhat suggestive identification procedure because the detainee is displayed alone and the witness is asked, essentially, whether *this* is the perpetrator. Nevertheless, the fact that a victim identified the detainee in a showup is admissible in court if the circumstances indicating the identification was reliable outweigh the circumstances indicating it was suggestive.⁹⁷

In making this determination, the following circumstances are considered relevant:

- The length of time between the crime and the showup.
- The opportunity of the victim to see the perpetrator when the crime occurred.
- The extent to which the victim directed his attention to the perpetrator.
- The accuracy of the victim’s prior description of the perpetrator to officers or others.
- The level of certainty demonstrated by the victim at the time he identified the detainee at the showup.
- Before the showup, officers gave a cautionary instruction; e.g., don’t assume the

⁹⁴ (1987) 195 Cal.App.3d 269.

⁹⁵ See *People v. Harris* (1975) 15 Cal.3d 384, 391 [“We can conceive of factual situations in which it might be quite reasonable to transport a suspect to the crime scene for possible identification, If, for example, the victim of an assault or other serious offense was injured or otherwise physically unable to be taken to promptly view the suspect, or a witness was similarly incapacitated, and the circumstances warranted a reasonable suspicion that the suspect was indeed the offender, a ‘transport’ detention might well be upheld.”]; *In re Carlos M.* (1990) 220 Cal.App.3d 372, 382 [permissible to transport a rape suspect to a hospital for a showup because the victim was undergoing a “rape-victim examination” which officers believed would take about two hours]; *In re Lynette G.* (1976) 54 Cal.App.3d 1087, 1094.

⁹⁶ See *People v. Harris* (1975) 15 Cal.3d 384, 391. ALSO SEE *People v. Gatch* (1976) 56 Cal.App.3d 505, 509 [“(T)he time involved in defendant’s detention-transportation was so brief that it is extremely doubtful that calling in additional units would have accomplished a less intrusive means of handling the situation.”].

⁹⁷ See *Neil v. Biggers* (1972) 409 US 188, 199; *Manson v. Brathwaite* (1977) 432 US 98, 116; *People v. Clark* (1992) 3 Cal.4th 41, 135; *People v. DeSantis* (1992) 2 Cal.4th 1198, 1222; *People v. Contreras* (1993) 17 Cal.App.4th 813, 820-1.

person you will see was the perpetrator.

- If there were multiple victims or witnesses, officers separated them during the showup so that a positive ID or other response by one of them could not have influenced the others.
- It was not apparent that the detainee was handcuffed or otherwise physically restrained.⁹⁸

Other procedures

There are several other things officers may do during the course of an investigative detention, such as the following:

FIELD CONTACT CARDS: For various reasons, officers may want to obtain certain information about the detainee so it can be stored in a data base or routed to a particular investigator or other agency. This information usually includes the detainee's name, address, vehicle description, the names of his companions, and a summary of the details surrounding the stop.

Although it may take a few minutes to obtain such information, it's justified if, (1) the detention was based on reasonable suspicion that the detainee committed a felony, misdemeanor, or an infraction for which he could have been taken into custody, and (2) officers were diligent. As the Court of Appeal explained:

Field identification cards perform a legitimate police function. If done expeditiously and in an appropriate manner after a lawful stop and in response to circumstances which indicate that a crime has taken place and there is cause to believe that the person detained is involved in same, the procedure is not constitutionally infirm.⁹⁹

FINGERPRINTING THE DETAINEE: Officers who have lawfully detained a suspect may fingerprint him at the scene if, (1) they reasonably believed that fingerprinting would confirm or dispel their suspicion that the suspect committed the crime for which he was detained, and (2) the procedure was carried out "with dispatch."¹⁰⁰

The U.S. Supreme Court has also indicated that if these two requirements are met a judge may issue a warrant—based on reasonable suspicion—authorizing the removal of the detainee to a police station for the purpose of fingerprinting.¹⁰¹

PHOTOGRAPHING THE DETAINEE: Officers may photograph a suspect at the scene of the detention (e.g., for inclusion in a photo lineup) if, (1) they had grounds to detain the suspect, (2) they reasonably believed the photograph would confirm or dispel their suspicion, and (3) the procedure did not unduly prolong the detention.¹⁰² The detainee

⁹⁸ See *People v. Cowger* (1988) 202 Cal.App.3d 1066, 1072; *People v. Martinez* (1989) 207 Cal.App.3d 1204, 1219; *In re Carlos M.* (1990) 220 Cal.App.3d 372, 386; *People v. Contreras* (1993) 17 Cal.App.4th 813, 820; *People v. Johnson* (1989) 210 Cal.App.3d 316, 323; *People v. Odom* (1980) 108 Cal.App.3d 100, 106; *People v. Jardine* (1981) 116 Cal.App.3d 907, 915.

⁹⁹ *People v. Harness* (1983) 139 Cal.App.3d 226, 233.

¹⁰⁰ See *Hayes v. Florida* (1985) 470 US 811, 817; *Davis v. Mississippi* (1969) 394 US 721, 727-8.

NOTE: There is a presumption that fingerprints on file with a law enforcement agency for a previous arrest were obtained lawfully. See *People v. Reserva* (1969) 2 Cal.App.3d 151, 155-6.

¹⁰¹ See *Hayes v. Florida* (1985) 470 US 811, 817 ["We also do not abandon the suggestion in [*Davis v. Mississippi* (1969) 394 US 721 and *Dunaway v. New York* (1979) 442 US 200] that under circumscribed procedures, the Fourth Amendment might permit the judiciary to authorize the seizure of a person on less than probable cause and his removal to the police station for the purpose of fingerprinting."].

¹⁰² See *Hayes v. Florida* (1985) 470 US 811, 816-7. **ALSO SEE** *People v. Rodriguez* (1993) 21 Cal.App.4th 232 [photo taken during illegal detention]; *People v. Thierry* (1998) 64 Cal.App.4th 176.

may also be photographed, of course, if he consented.¹⁰³

WARRANT CHECKS: Officers may prolong a detention for a reasonable period of time to run a warrant check if the detention was based on reasonable suspicion that the detainee committed a felony, misdemeanor, or a traffic violation for which the driver could have been taken into custody; e.g., reckless driving, no satisfactory ID.¹⁰⁴ If an initial computer check shows an outstanding warrant, the detention may be prolonged for confirmation.¹⁰⁵

CANINE SNIFFING: Officers may prolong an investigative detention to have a drug-sniffing dog check the detainee, the outside of his car, or other property if, (1) there was reasonable suspicion to believe the detainee was in possession of drugs, and (2) officers were diligent in arranging and conducting the test.¹⁰⁶

SEARCH FOR EVIDENCE: If officers reasonably believed the detainee discarded evidence or attempted to hide it just before he was stopped, the detention may be prolonged for a reasonable period to search for it.¹⁰⁷

CHECK CRIME SCENE: If the suspect was detained because officers reasonably believed he had just committed a crime, the detention may be prolonged for the purpose of checking the crime scene for evidence if they reasonably believed that evidence might be present.¹⁰⁸ For example, if the detention was based on reasonable suspicion that the detainee had just burglarized a house, it would be reasonably necessary to prolong the detention while officers checked to make sure a break-in had, in fact, occurred.

OBTAINING INFORMATION FROM OTHERS: In attempting to confirm or dispel their suspicions, officers may need to speak with other people by phone or radio.¹⁰⁹ This may be necessary, for example, to verify an alibi or other information furnished by the detainee, or determine whether property in the detainee's possession was stolen. A delay

¹⁰³ See *People v. Marquez* (1992) 1 Cal.4th 553, 578.

¹⁰⁴ See *People v. Harness* (1983) 139 Cal.App.3d 226, 231; *People v. Stoffle* (1991) 1 Cal.App.4th 1671, 1679; *People v. McLaughran* (1979) 25 Cal.3d 577, 583 [“(T)he right to custody manifestly includes the right to detain for a warrant check.”]; *Carpio v. Superior Court* (1971) 19 Cal.App.3d 790, 792-3 [40-minute delay for warrant check OK because detainee was stopped for speeding, “evasive action,” and driving on an expired temporary permit; the officer testified that “in his experience, the failure of the DMV to issue a permanent license usually indicated that traffic tickets or warrants were outstanding.”]; *People v. Herrera* (1975) 52 Cal.App.3d 177, 182 [warrant check during detention of suspected burglar OK]; *People v. Suennen* (1980) 114 Cal.App.3d 192, 201.

¹⁰⁵ See *People v. McLaughran* (1979) 25 Cal.3d 577, 582, fn.2; *People v. Suennen* (1980) 114 Cal.App.3d 192, 200. ALSO SEE *United States v. Hensley* (1985) 469 US 221, 234 [wanted flyer on detainee justified “brief detention at the scene of the stop while officers checked whether a warrant had been issued].

¹⁰⁶ See *People v. Daugherty* (1996) 50 Cal.App.4th 275, 281, fn.1 [“(T)he lawfulness of the dog sniff rises or falls on the lawfulness of the [detention].”]; *Indianapolis v. Edmond* (2000) 531 US ___ [148 L.Ed.2d 333, 342][“The fact that officers walk a narcotics-detection dog around the exterior of each car at the Indianapolis checkpoints does not transform the seizure into a search.”]; *United States v. Place* (1983) 462 US 696, 707; *Florida v. Royer* (1983) 460 US 491, 505-6 [“The courts are not strangers to the use of trained dogs to detect the presence of controlled substances in luggage. . . If it had been used, Royer and his luggage could have been momentarily detained while this investigative procedure was carried out.”]; *U.S. v. Lebrun* (8th Cir. 2001) 261 F.3d 731; *People v. Bell* (1996) 43 Cal.App.4th 754, 769 [“A ‘sniff’ by a trained drug-sniffing dog in a public place is not a ‘search’ within the meaning of the Fourth Amendment.”]; *U.S. v. \$404,905* (8th Cir. 1999) 182 F.3d 643, 648. COMPARE *United States v. Place* (1983) 462 US 696, 709 [90-minute delay for arrival of dog was unreasonable under the circumstances].

¹⁰⁷ See *Michigan v. Summers* (1981) 452 US 692, 700, fn.12.

¹⁰⁸ See *Michigan v. Summers* (1981) 452 US 692, 700, fn.12.

¹⁰⁹ See *Michigan v. Summers* (1981) 452 US 692, 700, fn.12.

for this purpose is justified if officers are diligent in seeking the information. As the court stated in *Louisiana v. Fauria*,¹¹⁰ “Inherent in the officer’s right to stop a suspect and demand his name, address, and an explanation of his actions is the right to detain him temporarily to verify the information given.”

If confirmation will take too long, another option is to identify the detainee, his address, employer, and any other information necessary to locate him, then release him pending the investigation.

CONVERTING A DETENTION INTO A CONTACT

Many of the legal problems officers encounter during investigative detentions can be avoided by converting the detention into a consensual encounter or “contact.” Because contacts are, by definition, consensual, the various restrictions that pertain to investigative detentions do not apply.¹¹¹ As the U.S. Court of Appeals observed, “[I]f the encounter between the officer and the driver ceases to be a detention, but becomes consensual, and the driver voluntarily consents to additional questioning, no further Fourth Amendment seizure or detention occurs.”¹¹² For example, so long as the suspect is willing to speak with officers, it doesn’t matter what they talk about or for how long.

To convert a detention into a contact, officers must do two things. First, they must return to the detainee his driver’s license and any other documents or property he gave to them for inspection.¹¹³ Second, they must tell the suspect he is free to go. Although this is not technically a requirement,¹¹⁴ as a practical matter it is very difficult to convert a detention into a contact without it.¹¹⁵ Note that telling a suspect he is free to go won’t

¹¹⁰ (1981) 393 So.2d 688. ALSO SEE *U.S. v. Watts* (8th Cir. 1993) 7 F.3d 122.

¹¹¹ See *Florida v. Bostick* (1991) 501 US 429, 438 [a contact occurs “only if the cooperation is voluntary.”]; *Wilson v. Superior Court* (1983) 34 Cal.3d 777, 784; *U.S. v. Werking* (10th Cir. 1990) 915 F.2d 1404, 1408 [“A consensual encounter is simply the voluntary cooperation of a private citizen in response to non-coercive questioning by a law enforcement official.”]; *U.S. v. Wilson* (4th Cir. 1991) 953 F.2d 116, 126 [“The police may initiate an encounter without any suspicion, and as long as the person consents, the police may continue to engage the suspect.”].

¹¹² *U.S. v. Anderson* (10th Cir. 1997) 114 F.3d 1059, 1064.

¹¹³ See *Florida v. Royer* (1983) 460 US 491 504 [“(W)hen the officers identified themselves as narcotics agents, told Royer that he was suspected of transporting narcotics, and asked him to accompany them to the police room, while retaining his ticket and driver’s license and without indicating in any way that he was free to depart, Royer was effectively seized for the purposes of the Fourth Amendment.” At p. 501][“(B)y returning his ticket and driver’s license, and informing him that he was free to go if he so desired, the officers might have obviated any claim that the encounter was anything but a consensual matter from start to finish.” At p. 504]; *United States v. Mendenhall* (1980) 446 US 544, 555; *U.S. v. Sandoval* (10th Cir. 1994) 29 F.3d 537, 540 [“no reasonable person would feel free to leave without such documentation.”]; *U.S. v. Beck* (8th Cir. 1998) 140 F.3d 1129, 1135; *U.S. v. Sullivan* (4th Cir. 1998) 138 F.3d 126, 133 [“(The officer) did not question Sullivan until after he had returned Sullivan’s license and registration, thus ending the traffic stop and affording Sullivan the right to depart.”]; *U.S. v. White* (8th Cir. 1996) 81 F.3d 775, 779; *U.S. v. Anderson* (10th Cir. 1997) 114 F.3d 1059, 1064; *U.S. v. Werking* (10th Cir. 1990) 915 F.2d 1404, 1409; *U.S. v. Holt* (10th Cir. 2000) 229 F.3d 931, 936, fn.5 [“This circuit has consistently applied at least one bright-line rule in determining whether an officer and driver are engaged in a consensual encounter: an officer must return a driver’s documentation before the detention can end.”].

¹¹⁴ See *Ohio v. Robinette* (1996) 519 US 33.

¹¹⁵ See *Berkemer v. McCarty* (1984) 468 US 420, 436 [“Certainly few motorists would feel free [to] leave the scene of a traffic stop without being told they might do so.”]; *People v. Profit* (1986) 183 Cal.App.3d 849, 877 [“(D)elivery of such a warning weighs heavily in favor of finding voluntariness and consent.”]; *People v. Daugherty* (1996) 50 Cal.App.4th 275, 280 [officer

have any affect if there were other circumstances that reasonably indicated he could not leave.¹¹⁶

Another thing that may help officers convert a detention into a contact is to take a few seconds to explain why they are seeking the suspect's cooperation; e.g., why they want to continue to speak with him, why they want to run a warrant check, why they are seeking consent to search. Such an explanation is important because it tends to communicate the idea that they are seeking the suspect's cooperation, not demanding it.¹¹⁷

“advised Daugherty she was not under arrest, she was free to go at any time, and she did not have to speak with him.”]; *U.S. v. Beck* (8th Cir. 1998) 140 F.3d 1129,1135; *Morgan v. Woessner* (9th Cir. 1993) 997 F.2d 1244, 1254 [“Although an officer’s failure to advise a citizen of his freedom to walk away is not dispositive of the question of whether the citizen knew he was free to go, it is another significant indicator of what the citizen reasonably believed.”].

¹¹⁶ See *U.S. v. Sandoval* (10th Cir. 1994) 29 F.3d 537, 540 [“After the point at which the driver has his or her other documentation back, the touchstone of our analysis is simply whether . . . the driver has an objective reason to believe that he was not free to end his conversation with the law enforcement officer and proceed on his way.”]; *U.S. v. Beck* (8th Cir. 1998) 140 F.3d 1129, 1136-7; *U.S. v. Ramos*, (8th Cir. 1994) 42 F.3d 1160, 1162-4; *U.S. v. Galvan-Muro* (8th Cir. 1998) 141 F.3d 904, 906 [in discussing *Ramos*, the court noted, “[W]hen the officer in *Ramos* asked for permission to search the vehicle, the brothers were separated. Even though the officer had returned the driver’s license, the separation of the driver and passenger prevented the driver from terminating the encounter such that a reasonable person would not feel free to leave.”]; *U.S. v. Sullivan* (4th Cir. 1998) 138 F.3d 126; *U.S. v. White* (8th Cir. 1996) 81 F.3d 775, 779.

¹¹⁷ See *U.S. v. Thompson* (7th Cir. 1997) 106 F.3d 794, 798 [“(T)he trooper explicitly told Thompson that she was free to leave. He then justified his desire to ask Thompson more questions by explaining that part of his job was to prevent the transport of illegal guns and drugs. Moreover, the trooper told Thompson that she did not have to sign the consent to search form. In other words, the trooper did everything that the law requires him to do: he returned the defendant’s identification to her, informed her of her rights, and explained both what he was doing and why he was doing it.”]; *People v. Spicer* (1984) 157 Cal.App.3d 213, 220 [“Had [the officer] informed Ms. Spicer he wanted to see her driver’s license because [the driver] might be arrested and the car turned over to her, Ms. Spicer would have understood she had a choice. She could produce the license or not depending on whether she desired to take charge of the automobile. Had the officer made his purpose known to Ms. Spicer, it would have substantially lessened the probability his conduct could reasonably have appeared to her to be coercive.”].