

## TRAFFIC STOPS

*“[W]e are all familiar with the sinking feeling a driver experiences upon seeing police lights in the rearview mirror . . .”*<sup>1</sup>

According to the U.S. Department of Justice, 52% of all encounters people have with officers occur during traffic stops.<sup>2</sup> This, of course, brings officers into contact with all kinds of people—including some whose Vehicle Code violations are the least of their transgressions.

Still, most traffic stops are fairly routine. For the violators, there’s some anxiety, inconvenience, and embarrassment, but, as the U.S. Supreme Court noted, it doesn’t last long:

A motorist’s expectations when he sees a policeman’s light flashing behind him are that he will be obliged to spend a short period of time answering questions and waiting while the officer checks his license and registration, that he may then be given a citation, but that in the end he most likely will be allowed to continue on his way.<sup>2</sup>

Some traffic stops, however, don’t follow the script. The driver may not have registration or any ID, questions occasionally arise about ownership of the vehicle, there might be a need for officer-safety precautions, or it may become necessary to detain the occupants to investigate a more serious crime.

The point is that traffic stops are unpredictable, and officers often have a legitimate need to do more than just write a citation. On the other hand, the violator has a legitimate right not to be delayed any longer than is necessary. How can both of these legitimate interests be respected?

The courts have attempted to accomplish this by imposing certain restrictions on how officers conduct traffic stops. Although these restrictions give officers a fair degree of flexibility in resolving problems, the courts insist on two things:

**Diligence:** Officers must be diligent in carrying out their duties.

**Scope:** They must do only those things that are reasonably necessary.

Of course, if officers develop reasonable suspicion to detain the driver or other occupant, the traffic stop automatically becomes an investigative detention which means, as discussed in the article beginning on page one, that officers will have many more options. In the absence of reasonable suspicion, however, officers must exercise restraint because if a court concludes they exceeded the permissible scope of the stop, or if they were not diligent, the stop will be converted into a *de facto* arrest.

Consequently, officers must know exactly what actions are permissible at the outset of the stop, and what they can do in response to developing circumstances. They must also know how the courts interpret the requirement that traffic stops be conducted with “diligence.” These are the subjects we will cover in this article.

First, however, we must define three of the terms that will appear:

**ROUTINE TRAFFIC STOP:** A routine traffic stop is a detention of an occupant of a vehicle—usually the driver—for the purpose of issuing a traffic citation or warning.

**REDIRECTED TRAFFIC STOP:** A redirected traffic stop starts out routinely but then something happens that causes the officers to direct their attention elsewhere; e.g., they begin to suspect the driver is involved in some criminal activity.<sup>3</sup>

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<sup>1</sup> *People v. Cartwright* (1999) 72 Cal.App.4<sup>th</sup> 1362, 1374-5.

<sup>2</sup> *Berkemer v. McCarty* (1984) 468 US 420, 437.

<sup>3</sup> See *Michigan v. Long* (1983) 463 US 1032 [officer saw knife inside car]; *People v. Valencia* (1993) 20 Cal.App.4<sup>th</sup> 906, 918 [“If the driver cannot produce his or her license, or satisfactory

**PRETEXT TRAFFIC STOP:** In a pretext traffic stop, officers utilize a traffic violation as a pretext or excuse to conduct an investigation into a more serious offense. Although somewhat controversial, pretext stops are lawful, at least at the outset, if there were grounds to believe a Vehicle Code violation occurred. They can, however, become *de facto* arrests if officers stray too far from their legitimate duties pertaining to the traffic violation.<sup>4</sup>

## DILIGENCE

A traffic stop, like an investigative detention, must be conducted without undue delay. As the court noted in *Venegas v. County of Los Angeles*,<sup>5</sup> “When an officer makes a traffic stop, the stop may last only so long as is reasonably necessary to perform the duties incurred by virtue of the stop.”

There is, however, no set time limit after which the stop must be terminated. This is because there are many things that can occur during even a routine stop that will necessarily prolong it. As the U.S. Court of Appeals observed, “Given the myriad situations in which traffic stops occur, it is not reasonable to subject them to the length-of-detention analysis we use in evaluating investigatory stops.”<sup>6</sup>

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proof of identity, or the registration, then the officer may expand the scope of the detention, depending on the circumstances.”]; *People v. Webster* (1991) 54 Cal.3d 411, 430-1 [“Defendant had disclaimed ownership of the car, stating that it belonged to a passenger, but also said the passengers were hitchhikers. The passengers confirmed they were hitchhikers, and all denied ownership. In this uncertain situation [the officer] was amply entitled to inspect the Chrysler’s registration to ascertain its owner before deciding whether to release or impound the vehicle.”]. *People v. Castellon* (1999) 76 Cal.App.4th 1369, 1373 [“At the point where [the passenger] failed to follow [the officer’s] order to remain in the car and [the officer] became concerned for his safety, the stop ceased to be a routine traffic stop. . . . [The] focus shifted from a routine investigation of a Vehicle Code violation to officer safety.”]; *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.”]; *People v. Lingo* (1970) 3 Cal.App.3d 661, 664; *United States v. Sharpe* (1985) 470 US 675, 688, fn.6 [officers could not utilize the usual procedure in stopping two cars because the drivers stopped at different locations].

<sup>4</sup> See *Whren v. United States* (1996) 517 US 806, 813; *Ohio v. Robinette* (1996) 519 US 33, 38; *Arkansas v. Sullivan* (2001) 532 US \_\_\_ [149 L.Ed.2d 994]; *People v. Woods* (1999) 21 Cal.4th 668; *People v. Marquez* (1992) 1 Cal.4th 553, 578; *People v. Valenzuela* (1999) 74 Cal.App.4th 1202, 1207, fn.2 [“In a pretext case, only the investigative motive is bona fide.” Quoting *U.S. v. Bowhay* (9th Cir. 1993) 992 F.2d 229, 231]; *U.S. v. Hill* (6th Cir. 1999) 195 F.3d 258, 264 [“(A)n officer may stop a vehicle for a traffic violation when his true motivation is to search for contraband, as long as the officer had probable cause to initially stop the vehicle.”]; *U.S. v. \$404,905* (8th Cir. 1999) 182 F.3d 643, 646 [“A valid traffic stop may not be challenged on the ground that it was a pretext for other investigation.”]; *U.S. v. Perez* (9th Cir. 1994) 37 F.3d 510, 513 [“A pretextual stop occurs when the police use a legal justification to make the stop in order to search a person or place, or to interrogate a person, for an unrelated serious crime for which they do not have the reasonable suspicion necessary to support a stop.”].

<sup>5</sup> (2002) 105 Cal.App.4th 636, 653. ALSO SEE *United States v. Sharpe* (1985) 470 US 675, 685 [“Obviously, if an investigative stop continues indefinitely, at some point it can no longer be justified as an investigative stop.”].

<sup>6</sup> *U.S. v. \$404,905* (8th Cir. 1999) 182 F.3d 643, 648 [court ruled an extension of a traffic stop for two minutes after it should have been completed was *de minimis*]; *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.”]; *U.S. v. Torres-Sanchez* (9th Cir. 1996) 83 F.3d 1123, 1129 [“‘Brevity’ can only be

So, rather than set an outside time limit, the courts insist only on diligence, which has been aptly defined as “showing care and conscientiousness in one’s work or duties.”<sup>7</sup> For example in *Ingle v. Superior Court*<sup>8</sup> the court rejected the argument that the officers were not diligent by pointing out, “Each step in the investigation conducted by [the officers] proceeded logically and immediately from the previous one.”<sup>9</sup>

#### SCOPE OF A TRAFFIC STOP

The permissible scope of a traffic stop—meaning, the types of actions officers may take—depends on the nature of the stop and how things develop.<sup>10</sup> As the Court of Appeal explained, “[E]very action taken by an officer in the course of making a traffic stop [must] be objectively reasonable and justified by the specific facts and circumstances confronting the officer.”<sup>11</sup>

Because most stops are uneventful, there is a basic procedure that usually works well— but it’s a procedure that can, if warranted, be expanded or even abandoned altogether.

#### Basic procedure

When, as is usually the case, the officer actually sees the violation, the stop is based on probable cause and the violator is technically under “arrest.”<sup>12</sup> As a practical matter,

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defined in the context of each particular case.”]; *People v. Gorak* (1987) 196 Cal.App.3d 1032, 1037; *People v. Dasilva* (1989) 207 Cal.App.3d 43, 50.

<sup>7</sup> See *The New Oxford American Dictionary* (2001) p. 478.

<sup>8</sup> (1982) 129 Cal.App.3d 188, 196.

<sup>9</sup> **NOTE:** Although it’s too early to know for sure, there are indications the “diligence” requirement is being interpreted a little more loosely. In the past, it was least arguable that a delay lasting more than a “few moments” might convert a traffic stop into a *de facto* arrest. See *People v. McLaughran* (1979) 25 Cal.3d 577, 584, fn.6]. More recently, however, it has been suggested that because traffic stops are based on probable cause, they are not subject to the fairly strict time and scope limitations imposed on investigative detentions. See *U.S. v. Childs* (7<sup>th</sup> Cir. 2002) 277 F.3d 947, 953 [“Because probable cause supported this [traffic] stop, neither the driver nor Childs had a right to be released the instant the steps to check license, registration and outstanding warrants, and to write a ticket, had been completed. It is therefore not necessary to determine whether the officers’ conduct added a minute or so to the minimum time in which these steps could have been accomplished.”]; *U.S. v. \$404,905* (8<sup>th</sup> Cir. 1999) 182 F.3d 643, 648 [“A traffic stop is not investigative; it is a form of arrest, based upon probable cause that a penal law has been violated. Length of detention following an arrest is normally not of judicial concern, provided the arrested person is taken without unnecessary delay before the nearest available judicial officer. Arrest also justifies investigative procedures that are not allowed in the [investigative detention context].”]. Some indirect support for this position is found in *Atwater v. City of Lago Vista* (2001) 532 US \_\_\_ [149 L.Ed.2d 549, 577]; *People v. McKay* (2002) 27 Cal.4<sup>th</sup> 601, 618 which held that when officers have probable cause to stop a traffic violator, they are permitted under the Fourth Amendment to arrest him and transport him for an appearance before a magistrate.

<sup>10</sup> See *People v. McLaughran* (1979) 25 Cal.3d 577, 586 [“(A)n investigatory detention [may] exceed constitutional bounds when extended beyond what is reasonably necessary under the circumstances which made its initiation possible.”]; *Berkemer v. McCarty* (1984) 468 US 420, 439 [“The stop and inquiry must be reasonably related in scope to the justification for their initiation.”]; *People v. Bell* (1996) 43 Cal.App.4<sup>th</sup> 754, 761; *U.S. v. Hill* (6<sup>th</sup> Cir. 1999) 195 F.3d 258, 268-70.

<sup>11</sup> *People v. Miranda* (1993) 17 Cal.App.4<sup>th</sup> 917, 928.

<sup>12</sup> See *People v. Hubbard* (1970) 9 Cal.App.3d 827, 833.

however, traffic stops have virtually nothing in common with arrests and are subject to the same rules as investigatory detentions.<sup>13</sup>

In any event, officers who have made a lawful traffic stop—whether it’s routine, redirected, or pretext—must start out the same way.

**IDENTIFY DRIVER:** Obtain “satisfactory” proof of the driver’s identity.<sup>14</sup>

**INSPECT LICENSE, REGISTRATION, PROOF OF INSURANCE:** Examine the driver’s license, vehicle registration, and proof of financial responsibility.<sup>15</sup>

**DMV CHECK:** Run a computer check to determine the current status of the license and registration.<sup>16</sup>

**INSPECT VIN:** Inspect the VIN number on the dash.<sup>17</sup>

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<sup>13</sup> See *Berkemer v. McCarty* (1984) 468 US 420, 439, fn.29 [“(M)ost traffic stops resemble, in duration and atmosphere, the kind of brief detention authorized in [*Terry v. Ohio* (1968) 392 US 1.”]; *People v. Bell* (1996) 43 Cal.App.4<sup>th</sup> 754, 760 [“An ordinary traffic stop is treated as an investigatory detention.”]; *U.S. v. Hill* (6<sup>th</sup> Cir. 1999) 195 F.3d 258, 264 [“An ordinary traffic stop is more akin to an investigative detention rather than a custodial arrest, and the principles announced in *Terry v. Ohio* (1968) 440 US 648, 653 apply to define the scope of reasonable police conduct.”].

<sup>14</sup> See Vehicle Code §40302(a); Penal Code §853.5; *People v. Grant* (1990) 217 Cal.App.3d 1451, 1459 [“The citation procedure is essentially an honor system, requiring the good faith and cooperation of the person cited. At the very least, he must be able to convince the officer—either by exhibiting his driver’s license or by other satisfactory evidence—that the name he is signing on the written promise to appear corresponds to his true identity.”].

<sup>15</sup> See Vehicle Code §12951(b) [presentation of valid driver’s license], Vehicle Code §4462 [presentation and examination of registration card], Vehicle Code §16028 [proof of financial responsibility to be provided upon demand of peace officer]; *New York v. Class* (1986) 475 US 106, 115 [demand to inspect license and registration is proper]; *Delaware v. Prouse* (1979) 440 US 648, 659 [during traffic stops “licenses and registration papers are subject to inspection and drivers without them will be ascertained.”]; *People v. Lingo* (1970) 3 Cal.App.3d 661, 664 [officers who have made a lawful traffic stop may “continue that detention while they satisfied themselves as to its registration.”]; *People v. Loudermilk* (1987) 195 Cal.App.3d 996, 1002 [“It is commonplace in our society for traffic officers to require motorists to remove their driver’s license from their wallets when stopped by the officer.”]; *People v. Webster* (1991) 54 Cal.3d 411, 430 [“The law (requires) the driver of a motor vehicle to produce his or her license and registration for examination upon a peace officer’s demand.”]; *People v. Faddler* (1982) 132 Cal.App.3d 607, 610 [“As a peace officer engaged in the lawful detention investigating violation of the traffic laws, [the officer] had a right to examine Faddler’s driver’s license.”]; *People v. Vermouth* (1971) 20 Cal.App.3d 746, 752; *People v. Valencia* (1993) 20 Cal.App.4<sup>th</sup> 906, 918-9; *U.S. v. Chavez-Valenzuela* (9<sup>th</sup> Cir. 2001) 268 F.3d 719, 724.

<sup>16</sup> See *U.S. v. Anderson* (10<sup>th</sup> Cir. 1997) 114 F.3d 1059, 1064 [“An officer conducting a routine traffic stop may perform a computer check on the driver’s license and the vehicle registration papers.”]; *U.S. v. Garcia* (9<sup>th</sup> Cir. 2000) 205 F.3d 1182; *U.S. v. Shabazz* (5<sup>th</sup> Cir. 1993) 993 F.2d 431, 437 [“(T)he law enforcement interest to be served by running a computer check on the license of someone stopped for a traffic violation is unquestioned.”]; *U.S. v. \$404,905* (8<sup>th</sup> Cir. 1999) 182 F.3d 643, 647 [“(H)aving made a valid traffic stop, the police officer may detain the offending motorist while the officer completes a number of routine but somewhat time-consuming tasks related to the traffic violation, such as computerized checks on the vehicle’s registration and the driver’s license and criminal history, and the writing up of a citation or warning.”].

<sup>17</sup> See *New York v. Class* (1986) 475 US 106, 115 [“(A) demand to inspect the VIN, like a demand to see license and registration papers, is within the scope of police authority pursuant to a traffic violation stop.”]. **ALSO SEE** *People v. Davitt* (1976) 56 Cal.App.3d 845 [in older cars in which the VIN is on the door jamb, officers may open the door for the limited purpose of inspecting the VIN. **NOTE:** “The VIN consists of more than a dozen digits, unique to each vehicle and required on all cars and trucks. The VIN is roughly analogous to a serial number, but it can be deciphered

**DISCUSS VIOLATION, ASK QUESTIONS:** Explain the violation, ask questions about the violation, listen to the driver's explanation.<sup>18</sup>

**CITE OR WARN:** Issue a warning or citation. If a citation is issued, obtain the violator's signature on the promise to appear.<sup>19</sup>

**TERMINATE STOP:** Promptly after officers have completed their duties they must terminate the stop unless there were circumstances that justified a prolonged stop.<sup>20</sup> As the U.S. Court of appeal explained, "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."<sup>21</sup>

For example, in *People v. Grace*<sup>22</sup> an officer stopped a driver because one of the brakelights on his car appeared to be out. As the officer approached the car, however, he became aware that the light, although dim, it did not constitute an equipment violation. an officer stopped a driver because one of the brakelights on his car appeared to be out. Nevertheless, he checked the front and rear lights and engaged the driver in a conversation. When he learned that the driver was on probation with a search clause, he searched the car and found drugs. But the court ruled the stop became unlawful when the officer failed to terminate the stop after he learned there was no Vehicle Code violation. Said the court, "[The officer's] right to detain the driver ceased as soon as he discovered the brakelight was operative and not in violation of statute. From that point on, [the officer] had no right to detain Grace further. . ."

No ID, registration

The most common reason for departing from the basic procedure is to confirm the driver's identity when he says he has no ID, or to verify vehicle ownership when the driver cannot produce valid registration.

**CONFIRM ID:** If the driver is unable to provide his driver's license or other satisfactory ID, officers usually have three options: (1) arrest the driver under Vehicle

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to reveal not only the place of the automobile in the manufacturer's production run, but the make, model, engine type, and place of manufacture of the vehicle." *New York v. Class* (1986) 475 US 106, 111.

<sup>18</sup> See *Venegas v. County of Los Angeles* (2002) 104 Cal.App.4<sup>th</sup> 936, 950 ["The purpose of questioning related to the purpose of the stop is to verify or dispel the suspicion that the law was being violated."]; *People v. McGaughran* (1979) 25 Cal.3d 577, 584; *U.S. v. Ramos* (8<sup>th</sup> Cir. 1994) 42 F.3d 1160, 1163 ["After stopping the truck, the trooper could ask any questions reasonably related to the stop."].

<sup>19</sup> See Vehicle Code §40504 [delivery of notice to appear]; *People v. Superior Court (Simon)* (1972) 7 Cal.3d 186, 199 [in a routine traffic stop, the violator must be released "forthwith" when he gives "his written promise that he will appear as directed."]; *People v. Grant* (1990) 217 Cal.App.3d 1451, 1458 [traffic violator "is not to depart until he has satisfactorily identified himself and has signed a written promise to appear."]; *People v. Miranda* (1993) 17 Cal.App.4<sup>th</sup> 917, 927.

<sup>20</sup> See *Knowles v. Iowa* (1998) 525 US 113; *People v. McGaughran* (1979) 25 Cal.3d 577, 586; *U.S. v. Holt* (10<sup>th</sup> Cir. 2001) 264 F.3d 1215, 1221 ["(M)otorists ordinarily expect to be allowed to continue on their way once the purposes of a stop are met. . . . Further delay is justified only if the officer has reasonable suspicion of illegal activity or if the encounter has become consensual."]; *U.S. v. Anderson* (10<sup>th</sup> Cir. 1997) 114 F.3d 1059, 1064; *U.S. v. Shabazz* (5<sup>th</sup> Cir. 1993) 993 F.2d 431, 436; *U.S. v. Ramos* (8<sup>th</sup> Cir. 1994) 42 F.3d 1160, 1164; ; *U.S. v. Sandoval* (10<sup>th</sup> Cir. 1994) 29 F.3d 537, 539-40 ["When the driver [who has been stopped for a minor traffic violation] has produced a valid license and proof that he is entitled to operate the car, he must be allowed to proceed on his way, without being subject to further delay by police for additional questioning."].

<sup>21</sup> *U.S. v. Hill* (6<sup>th</sup> Cir. 1999) 195 F.3d 258, 264.

<sup>22</sup> (1973) 32 Cal.App.3d 447.

Code §40302(a) for failing to provide a driver's license or other satisfactory evidence of identification,<sup>23</sup> (2) release the driver if he provides a thumbprint or fingerprint on the promise to appear,<sup>24</sup> or (3) ask questions or otherwise attempt to identify the driver; e.g., run a DMV check, separate the occupants and question them about the driver's identity.<sup>25</sup>

Like everything else officers do during traffic stops, investigations to confirm ID must be conducted diligently. For example, in *Venegas v. County of Los Angeles*<sup>26</sup> the court ruled that a two-hour detention for the purpose of confirming the driver's ID was unreasonable because, among other things, the officers "could have run the [violinator's name] through their system to see if any results matched up with the individual they had before them."

**SEARCH FOR ID:** If the detainee denies having written ID but is carrying a wallet, officers may, (1) order the driver to look through the wallet while they watch to

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<sup>23</sup> See *People v. Monroe* (1993) 12 Cal.App.4<sup>th</sup> 1174, 1182. ALSO SEE *People v. McKay* (2002) 27 Cal.4<sup>th</sup> 601, 623 [the burden is on the violator to provide "satisfactory" ID; officers are not required to "conduct sufficient inquiries calculated to elicit satisfactory evidence of identity"]. **NOTE:** A current driver's license is "satisfactory" ID (see *People v. McKay* (2002) 27 Cal.4<sup>th</sup> 601, 620; *People v. Monroe* (1993) 12 Cal.App.4<sup>th</sup> 1174, 1186) unless officers reasonably believe the license is fake or altered. (see *People v. McKay* (2002) 27 Cal.4<sup>th</sup> 601, 620 ["So long as the license is current, valid, and raises no suspicion that it has been altered or falsified, section 40302(a) does not require a custodial arrest."]). A document that is the "functional equivalent" of a driver's license is presumed to constitute "satisfactory" identification unless officers reasonably believe it is fake or altered. A document is the "functional equivalent" of a driver's license if it contains *all* of the following: the person's photograph, a brief physical description of the person, the person's signature, the person's current mailing address, serial numbering, and information establishing the document is current. See *People v. McKay* (2002) 27 Cal.4<sup>th</sup> 601, 620-2; *People v. Monroe* (1993) 12 Cal.App.4<sup>th</sup> 1174, 1187. Verbal ID and a document other than a driver's license or the functional equivalent of a driver's license is not presumptively "satisfactory" identification. In such cases, officers have the discretion to decide whether the person has been satisfactorily identified. *People v. McKay* (2002) 27 Cal.4<sup>th</sup> 601, 622 ["(W)e do not intend to foreclose the exercise of discretion by the officer in the field in deciding whether to accept or reject other evidence—including oral evidence—of identification."].

<sup>24</sup> See Penal Code §§853.5, 853.6(i)(5); Vehicle Code §§40500(a), 40504(a).

<sup>25</sup> See *People v. Valencia* (1993) 20 Cal.App.4<sup>th</sup> 906, 918 ["If the driver cannot produce his or her license, satisfactory proof of identity, or the registration, then the officer may expand the scope of the detention, depending on the circumstances."]; *People v. Miranda* (1993) 17 Cal.App.4<sup>th</sup> 917, 927 ["If the driver is unable to produce a driver's license, registration, or satisfactory proof of identity, then the officer may, depending on the circumstances, reasonably expand the scope of the stop, making it incrementally more intrusive."]; *People v. Grant* (1990) 217 Cal.App.3d 1451, 1459 ["Officer Soliz was justified in attempting to secure proof of the driver's identity by questioning [the passenger]."]; *People v. Maxwell* (1988) 206 Cal.App.3d 1004, 1010 [OK to ask passenger to exit so that officer could question him about driver's ID where the driver had no ID or registration: "Such a routine official investigation, conducted in a manner so as to assure independent reliability, was eminently reasonable under the circumstances shown."]; *Berkemer v. McCarty* (1984) 468 US 420, 439 [officers "may ask the detainee a moderate number of questions to determine his identity"]; *In re Gregory S.* (1980) 112 Cal.App.3d 764, 777 [officers "should be afforded reasonable latitude" in confirming the identification of a detainee]; *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."]. COMPARE *People v. Spicer* (1984) 157 Cal.App.3d 213 [no demonstrated need to question the passenger about the driver's ID because the driver's identity was not an issue]. **NOTE:** Officers may ask a passenger in the vehicle for ID only if reasonably necessary to carry out the purpose of the detention. See *People v. Grant* (1990) 217 Cal.App.3d 1451, 1459; *People v. Spicer* (1984) 157 Cal.App.3d 213.

<sup>26</sup> (2002) 105 Cal.App.4<sup>th</sup> 636, 655.

determine if it contains identification, or (2) search the wallet themselves for the limited purpose of locating written identification.<sup>27</sup> In addition, officers may conduct a warrantless search of the vehicle for ID, but the search must be limited to those places in which ID documents are usually located; i.e., the glove box, over the sun visor, and under the front seat.<sup>28</sup>

**SEARCH FOR REGISTRATION:** If the driver said he did not have the registration to the vehicle, officers may enter the vehicle and search for it in those places in which registration documents are usually located; i.e., the glove box, over the sun visor, and under the front seat.<sup>29</sup>

**MOVE VEHICLES:** If the driver's or officers' vehicles are exposed to danger, officers may require the driver to move to a safer location.<sup>30</sup>

#### Officer safety procedures

Although most traffic violators present no danger to officers, traffic stops occasionally turn violent. As noted in *U.S. v. Holt*,<sup>31</sup> the “terrifying truth” is that “officers face a very real risk of being assaulted with a dangerous weapon each time they stop a vehicle. The officer typically has to leave his vehicle, thereby exposing himself to potential assault by the motorist. The officer approaches the vehicle not knowing who the motorist is or what the motorist's intentions might be.”

For these reasons, officers may take whatever measures are reasonably necessary for their safety without converting the stop into a *de facto* arrest. The most common precautions are as follows:

**EXIT, STAY INSIDE:** Officers may order the driver and any other occupants to exit the vehicle or stay inside.<sup>32</sup> Officers will not be required to justify such a command.

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<sup>27</sup> See *People v. Long* (1987) 189 Cal.App.3d 77, 88; *People v. Rios* (1983) 140 Cal.App.3d 616, 621; *People v. Loudermilk* (1987) 195 Cal.App.3d 996, 1004; *Venegas v. County of Los Angeles* (2002) 104 Cal.App.4th 936, 951; *People v. Faddler* (1982) 132 Cal.App.3d 607, 610 [“The lateness of the hour, the presence of three men in the vehicle, the nature of the suspected violation and the conduct of the defendants together justified Officer Brand for his own safety ordering the occupants out of the vehicle [and searching it for the driver's ID].”]; *Ingle v. Superior Court* (1982) 129 Cal.App.3d 188, 194.

<sup>28</sup> 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.

<sup>29</sup> See *In re Arturo D.* (2002) 27 Cal.4th 60, 86 [“Limited warrantless searches for required registration and identification documents are permissible when, following the failure of a traffic offender to provide such documentation to the citing officer upon demand, the officer conducts a search for those documents in an area where such documents reasonably may be expected to be found.”]; *People v. Webster* (1991) 54 Cal.3d 411, 430-1; *People v. Faddler* (1982) 132 Cal.App.3d 607, 610; *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.”]; *Venegas v. County of Los Angeles* (2002) 104 Cal.App.4th 936, 951.

<sup>30</sup> See *People v. McGaughran* (1979) 25 Cal.3d 577, 584; *People v. Miranda* (1993) 17 Cal.App.4th 917, 927.

<sup>31</sup> (10th Cir. 2001) 264 F.3d 1215, 1223.

<sup>32</sup> **Order to stay inside:** See *New York v. Class* (1986) 475 US 106, 115 [“Keeping the driver of a vehicle in the car during a routine traffic stop is probably the typical police practice. Nonetheless, out of a concern for the safety of the police, the Court has held that officers may, consistent with the Fourth Amendment, exercise their discretion to require a driver who commits a traffic violation to exit the vehicle even though they lack any particularized reason for believing the driver possesses a weapon.”]; *Rogala v. District of Columbia* (D.C. Cir. 1999) 161 F.3d 44, 53 [“(A) police officer has the power to reasonably control the situation by requiring a passenger remain in a vehicle during a traffic stop, particularly where, as here, the officer is alone and feels

**KEEP HANDS IN SIGHT:** Officers may direct the driver and any occupants to keep their hands in sight regardless of whether there is reason to believe they are armed or dangerous.<sup>33</sup>

**POSITIONING OCCUPANTS:** If the occupants have been ordered out, officers may require them to stand or sit at a certain place, either together or separated, if such an order is reasonable in light of the circumstances surrounding the stop.<sup>34</sup> For example, in *People v. Maxwell*<sup>35</sup> the court ruled that officers who had made a traffic stop properly separated the occupants when the driver said he had no ID. Said the court, “[U]pon effecting the early morning stop of a vehicle containing three occupants, the officer was faced with the prospect of interviewing the two passengers in an effort to establish the identity of the driver. His decision to separate them for his own protection, while closely observing defendant as he rummaged through his pockets for identification, was amply justified and reasonable under the circumstances presented.”

**HANDCUFFING:** Although it’s seldom necessary, officers may handcuff the violator if there are circumstances that make it reasonably necessary; e.g., violator is overtly threatening or hostile.<sup>36</sup>

**QUESTIONS RELATED TO OFFICER SAFETY:** Officers may ask questions that are reasonably necessary for their safety so long as the questioning is brief and to the point. This would include questions that have an indirect or plausible connection to officer safety. For example, it would appear that officers may ask the violator if he has any weapons in his possession or is on probation or parole.<sup>37</sup> Asking the violator if he in

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threatened.”]; *People v. Castellon* (1999) 76 Cal.App.4<sup>th</sup> 1369, 1374 [“(W)hether the passenger is ordered to stay in the car or get out of the vehicle is a distinction without a difference.”]

**Order to exit:** See *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.”]; *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.”]; *U.S. v. Holt* (10<sup>th</sup> Cir. 2001) 264 F.3d 1215, 1222 [“An officer may also order the driver and passengers out of the vehicle in the interest of officer safety, even in the absence of any particularized suspicion of personal danger.”]; *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.4<sup>th</sup> 1222, 1230; *People v. Knight* (1971) 20 Cal.App.3d 45, 50 [“It is well established that when an officer stops a motorist under circumstances which justify his stopping the vehicle, he may properly request its occupant to alight. Such a demand is legally justified in order to insure the safety of the officer.”]; *People v. Beal* (1974) 44 Cal.App.3d 216, 220; *People v. Valencia* (1993) 20 Cal.App.4<sup>th</sup> 906, 918.

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

<sup>34</sup> See *New York v. Class* (1986) 475 US 106, 115; *People v. Maxwell* (1988) 206 Cal.App.3d 1004, 1010; *People v. Faddler* (1982) 132 Cal.App.3d 607, 610 [“The lateness of the hour, the presence of three men in the vehicle, the nature of the suspected violation [erratic driving, passenger leaning out window shouting and waving a whiskey glass, failure to yield] and the conduct of defendants together [one appeared under the influence, another was “boisterous” and “mouthy”] justified [the officer] for his own safety ordering the occupants out of the vehicle and strictly controlling their movements during the remainder of the detention.”].

<sup>35</sup> (1988) 206 Cal.App.3d 1004, 1010.

<sup>36</sup> See *Venegas v. County of Los Angeles* (2002) 104 Cal.App.4<sup>th</sup> 936, 952-3 [“Because Venegas admitted that he was hostile when approached by the officers, the officers’ handcuffing of him may have been initially justified by the need of a reasonably prudent officer to protect himself and others during the time that a traffic stop was permissible.”].

<sup>37</sup> See *People v. Castellon* (1999) 76 Cal.App.4<sup>th</sup> 1369, 1377 [“(The officer) asked two standard questions [Do you have any weapons? Do you have any narcotics?] in a short space of time, both relevant to officer safety.”]; *People v. Brown* (1998) 62 Cal.App.4<sup>th</sup> 493, 499 [“(The officer’s) questions about defendant’s probation status did not constitute a general crime investigation.



possession of drugs is arguably relevant to officer-safety because of the close connection between drugs and weapons, and because the actions of drug users are often unpredictable.<sup>38</sup>

If, however, the connection between the question and officer safety is farfetched, or if officers asked a series of exploratory questions, a court might rule the stop was unduly prolonged.<sup>39</sup>

**SEARCH FOR WEAPONS:** If the violator admits having a weapon in the vehicle (even a legal weapon), or if officers see one in the car, they may enter the passenger compartment to retrieve it and to search for others.<sup>40</sup> For example, in *People v. Lafitte*<sup>41</sup> deputies in Orange County stopped a car because a headlight was out. While one of the deputies spoke with the driver, Lafitte, the other deputy shined a flashlight into the passenger compartment and saw a hunting knife atop the glove box door. After removing Lafitte from the car, the deputies went into the car, seized the knife and searched for other weapons, finding a handgun. Lafitte later pled guilty to being a felon in possession of a gun. Although there was no reason to believe there were additional weapons in the vehicle, the court ruled the search was lawful, noting, “[T]he discovery of the weapon is the crucial fact which provides a reasonable basis for the officers’ suspicion.”

**FLASHLIGHTING THE INTERIOR:** Officers who are standing outside the vehicle may use a flashlight or spotlight to illuminate the interior to look for weapons.<sup>42</sup>

**OPENING DOOR OF BLACKED OUT CAR:** If the tinting on a car’s windows was so dark that officers couldn’t determine the number or location of the occupants, they may open a door and, without entering, look inside.<sup>43</sup>

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They merely provided the officer with additional pertinent information about the individual he had detained.”]; *U.S. v. Holt* (10<sup>th</sup> Cir. 2001) 264 F.3d 1215, 1224 [(A)llowing officers to ask about the presence of loaded weapons in a lawfully stopped vehicle will promote the government’s ‘legitimate and weighty’ interest in officer safety.”]. ALSO SEE *United States v. Knights* (2001) 534 US \_\_\_ [151 L.Ed.2d 497, 506][“43% of 79,000 felons places on probation in 17 States were rearrested for a felony within three years while still on probation.” Source: U.S. Department of Justice]. **NOTE:** Although many violators who possess weapons will not reveal this to officers, a sufficient number will so that the question is proper. See *U.S. v. Holt* (10<sup>th</sup> Cir. 2001) 264 F.3d 1215, 1224. Questions about weapons are also relevant because, even if the violator denies having a weapon or refuses to answer the question, the manner in which he responded (e.g., nervousness, evasive answers) may provide “valuable clues.” Ibid.

<sup>38</sup> See *People v. Lee* (1987) 194 Cal.App.3d 975, 989; *People v. Thurman* (1989) 209 Cal.App.3d 817, 822; *People v. Simpson*, (1998) 65 Cal.App.4<sup>th</sup> 854, 862; *People v. Samples* (1996) 48 Cal.App.4<sup>th</sup> 1197, 1209; *People v. Glaser* (1995) 11 Cal.4<sup>th</sup> 354, 367-8; *People v. Osuna* (1986) 187 Cal.App.3d 845, 856; *U.S. v. Childs* (7<sup>th</sup> Cir. 2002) 277 F.3d 947 954 [“By asking one question about marijuana, [the officer] did not make the custody of Childs an ‘unreasonable’ seizure.”].

<sup>39</sup> See *U.S. v. Holt* (10<sup>th</sup> Cir. 2001) 264 F.3d 1215, 1226, fn.5 [(A)ny questioning that unreasonably extends the duration of the stop must be justified by additional articulable suspicion or probable cause.”]; *People v. Alderson* (1978) 86 Cal.App.3d 274, 281-2 [officers “may not conduct an exploratory interrogation designed to elicit incriminating information wholly unrelated to the matter at hand.”].

<sup>40</sup> See *Michigan v. Long* (1983) 463 US 1032; *People v. King* (1989) 216 Cal.App.3d 1237; *People v. Molina* (1994) 25 Cal.App.4<sup>th</sup> 1038, 1042 [“Once the officers discovered the knives, they had reason to believe that their safety was in danger and, accordingly, were entitled to search the [passenger] compartment and any containers therein for weapons.”]; *People v. Williams* (1988) 45 Cal.3d 1268, 1303.

<sup>41</sup> (1989) 211 Cal.App.3d 1429.

<sup>42</sup> See *Texas v. Brown* (1983) 460 US 730, 740; *United States v. Dunn* (1987) 480 US 294, 305; *People v. Superior Court (Mata)* (1970) 3 Cal.App.3d 636, 639.

<sup>43</sup> See *U.S. v. Stanfield* (4<sup>th</sup> Cir. 1997) 109 F.3d 976, 981 [(W)henever, during a lawful traffic stop, officers are required to approach a vehicle with windows so heavily tinted that they are unable to

## Warrant checks

It has been the rule in California that unless officers had sufficient justification for doing so, they could run warrant checks on traffic violators only if the check did not prolong the stop more than a “few moments.”<sup>44</sup> This rule is based on the dubious premise that there is no legitimate reason for routinely running warrant checks on traffic violators.

Recently, however, there have been indications that the courts may be willing to give officers a little more leeway. This is because it is now recognized that warrant checks serve two important functions. First, they are in the public interest. As the court stated in *People v. Brown*:

[T]he trial court’s ruling that law enforcement officers may routinely run warrant checks on traffic infraction detainees, provided the check does not unreasonably prolong the detention, was correct. The government interest in apprehending individuals with outstanding arrest warrants outweighs the minimal inconvenience to that already lawfully experienced by the offender as the result of his or her traffic violation.<sup>45</sup>

Second, warrant information is relevant to the issue of officer safety. As the court stated in *U.S. v. Holt*,<sup>46</sup> “By determining whether a detained motorist has a criminal record or outstanding warrants, an officer will be better apprized of whether the detained motorist might engage in violent activity during the stop.”

Still, officers must be diligent in initiating the warrant check and, if it takes too long, they must either terminate the detention or seek the violator’s consent to wait for the results.<sup>47</sup>

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view the interior of the stopped vehicle, they may, when it appears in their experienced judgment prudent to do so, open at least one of the vehicle’s doors and, without crossing the plane of the vehicle, visually inspect its interior in order to ascertain whether the driver is armed, whether he has access to weapons, or whether there are other occupants of the vehicle who might pose a danger to the officers.”]

<sup>44</sup> See *People v. McGaughran* (1979) 25 Cal.3d 577, 584, fn.6; *People v. Hunt* (1990) 225 Cal.App.3d 498, 505, fn.4 [“The officer apparently ran the warrant check and DMV check at the same time. Therefore, the warrant check did not add to the duration of the detention and was permissible under *McGaughran*.”]; *People v. Stoffle* (1991) 1 Cal.App.4th 1671, 1679.

<sup>45</sup> (1998) 62 Cal.App.4th 493, 498. ALSO SEE *People v. Castaneda* (1995) 35 Cal.App.4th 1222, 1228 [warrant check OK when officer reasonably believed the occupant of the car was “not being honest about the car’s ownership.”]. **NOTE:** In *U.S. v. \$404,905* (8th Cir. 1999) 182 F.3d 643, 648 the court pointed out that a traffic stop is more akin to an arrest than a detention. This is because a traffic stop is ordinarily based on probable cause—not merely reasonable suspicion—that the driver has violated the law. Thus the court suggested it is possible that the time restraints on traffic stops may actually be less than those on investigative detentions. Said the court, “[W]e believe the Supreme Court would not closely examine the time it takes a traffic officer to complete the traffic stop itself, consistent with the discretion given arresting officers in other contexts.”]

<sup>46</sup> (10th Cir. 2001) 264 F.3d 1215, 1221. ALSO SEE *U.S. v. Finke* (7th Cir. 1996) 85 F.3d 1275, 1280 [warrant information “could indicate whether further back-up or other safety precautions were necessary.”]; *U.S. v. Purcell* (11th Cir. 2001) 236 F.3d 1274, 1278 [“The request for criminal histories as part of a routine computer check is justified for officer safety.”].

<sup>47</sup> See *People v. McGaughran* (1979) 25 Cal.3d 577, 584, fn.6 [court noted that a detention does not become unreasonably prolonged merely because an officer took a “few moments” to walk to his car to run a warrant check]; *People v. Brown* (1998) 62 Cal.App.4th 493, 499 [“One minute of generalized questioning during a routine traffic stop is not unreasonable.”]. COMPARE *Willett v. Superior Court* (1969) 2 Cal.App.3d 555, 559 [40-minute delay for warrant check on traffic violator was unreasonable].

## Questioning the driver

Officers may undoubtedly ask questions that directly relate to the purpose of the stop.<sup>48</sup> Questions with only an indirect relationship are usually permissible so long as there's a plausible relationship. For example, several courts have ruled the violator's travel plans are somewhat relevant and may, therefore, be a subject of inquiry.<sup>49</sup> In any event, the violator cannot be required to answer any such questions.<sup>50</sup> A more difficult issue is whether, or to what extent, officers may ask questions that are plainly extraneous.

The issue here is not whether officers may engage in "conventional pleasantries" or "small talk" which are permitted (and even encouraged) to put the violator at ease.<sup>51</sup> Nor is there any doubt that officers may ask questions that are reasonably necessary for their safety, as discussed earlier. Instead, the issue is whether officers who have a sneaking suspicion—but not "reasonable suspicion"—that the violator has committed or is committing a crime may ask the violator or other passengers questions to confirm or dispel the suspicion.<sup>52</sup>

This is most likely to become an issue in redirected and pretext stops because, unless officers see (or smell) something that provides grounds to convert the stop into an

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<sup>48</sup> See *Venegas v. County of Los Angeles* (2002) 104 Cal.App.4<sup>th</sup> 936, 952 [questioning about missing VIN plate]. **NOTE re Miranda:** A traffic violator is not "in custody" for *Miranda* purposes unless the stop had become lengthy or coercive, or if there were other circumstances that indicated the suspect was under arrest. See *Berkemer v. McCarty* (1984) 468 US 420, 439-40; *People v. Farnam* (2002) 28 Cal.4<sup>th</sup> 107, 180; *People v. Manis* (1969) 268 Cal.App.2d 653, 667.

<sup>49</sup> See *U.S. v. Holt* (10<sup>th</sup> Cir. 2001) 264 F.3d 1215, 1221 ["Travel plans typically are related to the purpose of a traffic stop because the motorist is traveling at the time of the stop. For example, a motorist's travel history and travel plans may help explain, or put into context, why the motorist was weaving (if tired) or speeding (if there was an urgency to the travel)."]; *U.S. v. Williams* (10<sup>th</sup> Cir. 2001) 271 F.3d 1262, 1267 ["(W)e have repeatedly held (as have other circuits) that questions relating to a driver's travel plans ordinarily fall within the scope of a traffic stop."]; *U.S. v. Chavez-Valenzuela* (9<sup>th</sup> Cir. 2001) 268 F.3d 719, 724, fn.4 ["(The officer's) inquiries about Chavez-Valenzuela's starting point, destination and general travel plans were probably justifiable."]; *U.S. v. Hill* (6<sup>th</sup> Cir. 1999) 195 F.3d 258, 268 [court notes officer is free to ask traffic-related questions, and questions about a driver's identity, business and travel plans]; *U.S. v. McSwain* (10<sup>th</sup> Cir. 1994) 29 F.3d 558, 561 [court notes that questions pertaining to travel plans have been permitted when it occurs before the officer's duties have been completed]; *U.S. v. \$404,905* (8<sup>th</sup> Cir. 1999) 182 F.3d 643, 647 ["(H)aving made a valid traffic stop, the police officer may . . . ask the motorist routine questions such as his destination, the purpose of the trip. . . ."]; *U.S. v. Ramos* (8<sup>th</sup> Cir. 1994) 42 F.3d 1160, 1163 ["After stopping the truck, the trooper could ask any questions reasonably related to the stop. Typically, a reasonable investigation of a traffic stop may include asking for the driver's license and registration, requesting the driver to sit in the patrol car, and asking the driver about his destination and purpose."].

<sup>50</sup> 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."].

<sup>51</sup> See *People v. Bell* <sup>51</sup> (1996) 43 Cal.App.4<sup>th</sup> 754, 768 [discussing such small talk, the court said, "We are loath to hold such efforts unconstitutional. We believe they are reasonably related to the purposes of a traffic stop."]; *People v. Brown* (1998) 62 Cal.App.4<sup>th</sup> 493, 499 ["One minute of generalized questioning during a routine traffic stop is not unreasonable."].

<sup>52</sup> See *U.S. v. Perez* (9<sup>th</sup> Cir. 1994) 37 F.3d 510, 513-4 [questioning beyond scope of stop permitted if officers developed reasonable suspicion].

investigative detention,<sup>53</sup> their only hope of developing reasonable suspicion is usually to ask questions. But if they cannot articulate a plausible connection between the questioning and a legitimate subject of inquiry, the stop may be deemed a *de facto* arrest.<sup>54</sup> As the Court of Appeal summed it up:

[Officers are precluded] from imposing a general crime investigation upon the detained traffic offender that is not reasonably necessary to completion of the officer's traffic citation duties unless the officer has an independent reasonable suspicion that the driver has committed unrelated offenses.<sup>55</sup>

Although there is no bright line between extraneous questions that are permissible and those that are impermissible, it appears that such questioning is permitted under two circumstances:

**BRIEF QUESTIONING:** Extraneous questioning is likely to be deemed permissible if it's brief and to the point. As the court stated in *U.S. v. Childs*:

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.<sup>56</sup>

Or, as noted in *Venegas v. County of Los Angeles*, “[Q]uestioning during the routine traffic stop on a subject unrelated to the purpose of the stop is not itself a Fourth Amendment violation. While the traffic detainee is under no obligation to answer unrelated questions, the Constitution does not prohibit law enforcement officers from asking.”<sup>57</sup>

On the other hand, lengthy “exploratory interrogation” or “fishing expeditions” are objectionable.<sup>58</sup> As the Court of Appeal observed, “[Officers may not] conduct an

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<sup>53</sup> **NOTE:** More often than not, a successful pretext stop requires some degree of luck. See *Whren v. United States* (1996) 517 US 806, 809 [just as the officers approached the car they saw in the passenger's hands “two large plastic bags of what appeared to be crack cocaine”].

<sup>54</sup> See *United States v. Brignoni-Ponce* (1975) 422 US 873, 881 [post-stop inquiries must be “reasonably related in scope” to the initial purpose of the stop]; *U.S. v. Chavez-Valenzuela* (9<sup>th</sup> Cir. 2001) 268 F.3d 719, 724 [“An officer must initially restrict the questions he asks during a [traffic] stop to those that are reasonably related to the justification for the stop. He may expand their scope only if he notices particularized, objective factors arousing his suspicion.”]; *U.S. v. Perez* (9<sup>th</sup> Cir. 1994) 37 F.3d 510, 513; *Williams v. Superior Court*<sup>54</sup> (1985) 168 Cal.App.3d 349.

<sup>55</sup> *Williams v. Superior Court* (1985) 168 Cal.App.3d 349, 358.

<sup>56</sup> (7<sup>th</sup> Cir. 2002) 277 F.3d 947 954. **NOTE:** The court in *Childs* stated 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.”]. ALSO SEE *U.S. v. \$404, 905* (8<sup>th</sup> Cir. 1999) 182 F.3d 643, 649 [“Thus, the canine sniff was thirty seconds or two minutes over our line, and it was done without reasonable suspicion to believe there were drugs in this particular vehicle. Does this mean Alexander was unconstitutionally detained? We think not. ¶ [A] two-minute canine sniff was a de minimis intrusion on Alexander's personal liberty . . . ”].

<sup>57</sup> (2002) 105 Cal.App.4<sup>th</sup> 636, 653.

<sup>58</sup> See *People v. Alderson* (1978) 86 Cal.App.3d 274, 281-2 [officers “may not conduct an exploratory interrogation designed to elicit incriminating information wholly unrelated to the matter at hand.”]. ALSO SEE *People v. Lingo* (1970) 3 Cal.App.3d 661, 664 [“(The officers) continued to detain defendant, his companion and his vehicle . . . to make inquiry about an offense which, admittedly, they had no grounds to suspect had been or was being committed.”]; *U.S. v. Chavez-Valenzuela* (9<sup>th</sup> Cir. 2001) 268 F.3d 719, 724, fn.4 [“(T)he question about Chavez-Valenzuela's occupation, unrelated as it was to the legitimate purpose for the stop, may have violated *Terry*.”]; *U.S. v. Pruitt* (11<sup>th</sup> Cir. 1999) 174 F.3d 1215, 1221 [“(A)dditional ‘fishing

exploratory interrogation designed to elicit incriminating information wholly unrelated to the matter at hand.”<sup>59</sup>

**CONCURRENT QUESTIONING:** If officers asked extraneous questions while they were doing things they are permitted to do by virtue of the traffic violation (such as writing a ticket or running a DMV check), the questions are permissible because they do not prolong the stop.<sup>60</sup>

#### Seeking consent to search

The propriety of seeking a traffic violator’s consent to search his car or other property is currently a hot and somewhat confusing issue. Although a simple request to search is not unconstitutional,<sup>61</sup> it is viewed by some as an abuse of the process; i.e., using a minor traffic violation to create a somewhat intimidating atmosphere in which to seek consent.<sup>62</sup> As the court noted in *New Jersey v. Carty*:

In the context of motor vehicle stops, where the individual is at the side of the road and confronted by a uniformed officer seeking to search his or her vehicle, it is not a stretch of the imagination to assume that the individual feels compelled to consent.<sup>63</sup>

Requesting consent is especially likely to cause concern when there is little, if any, justification for a search; i.e., it’s essentially a fishing expedition.

In any event, as the result, some courts, special interest groups, public officials and law enforcement agencies have expressed concern about the practice except, of course, when there is some objective justification for it. In fact, the New Jersey Supreme Court recently ruled that requests for consent to search during traffic stops are permitted under state law only if officers have reasonable suspicion.<sup>64</sup>

So, how do the California courts feel about it? It’s difficult to tell. There is authority—although not all of it directly on point—that a request for consent will not convert a stop into a *de facto* arrest if, (1) the request was brief and to the point, (2) it was not preceded by extraneous questioning, and (3) officers were diligent in conducting the search.<sup>65</sup>

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expedition’ questions such as ‘What do you do for a living?’ and ‘How much money did your van cost?’ are simply irrelevant, and constitute a violation of *Terry*.”].

<sup>59</sup> *People v. Grace* (1973) 32 Cal.App.3d 447, 452-3.

<sup>60</sup> See *People v. Bell* (1996) 43 Cal.App.4th 754, 768 [“Mere questioning is neither a search nor a seizure.”]; *U.S. v. Shabazz* (5<sup>th</sup> Cir. 1993) 993 F.2d 431, 437 [questioning OK because it occurred “while the officers were waiting for the results of the computer check. Therefore, the questioning did nothing to extend the duration of the initial, valid seizure.”].

<sup>61</sup> See *Schneekloth v. Bustamonte* (1973) 412 US 218, 227 [“In situations where the police have some evidence of illicit activity, but lack probable cause to arrest or search, a search authorized by a valid consent may be the only means of obtaining important and reliable evidence.”]; *People v. Crenshaw* (1992) 9 Cal.App.4th 1403; *People v. \$48,715* (1997) 58 Cal.App.4th 1507, 1516; *People v. Avalos* (1996) 47 Cal.App.4th 1569.

<sup>62</sup> See *Venegas v. County of Los Angeles* (2002) 104 Cal.App.4th 936, 955 [“Sufficient evidence in this record creates a jury question as to whether the officers took advantage of Venegas’s failure to possess his California identification card in order to search his home [after seeking and obtaining his consent to do so].”]; *U.S. v. Colin* (9<sup>th</sup> Cir. 2002) \_\_\_ F.3d \_\_\_; *People v. Reyes* (2000) 83 Cal.App.4th 7; *Estes v. Rowland* (1993) 14 Cal.App.4th 508, 527 [consent to search prison visitors was intimidating when it was obtained “in a coercive atmosphere, with guards wearing ‘combat gear’ and restraining chained dogs.”]; *People v. Gonsoulin* (1971) 19 Cal.App.3d 270, 274.

**COMPARE** *People v. Duren* (1973) 9 Cal.3d 218, 241 [consent is not involuntary merely because the suspect was at a psychological disadvantage].

<sup>63</sup> (2002) 790 A.2d 903, 910.

<sup>64</sup> See *New Jersey v. Carty* (2002) 790 A.2d 903.

<sup>65</sup> See *United States v. Drayton* (2002) 536\_\_\_ US \_\_\_ [153 L.Ed.2d 242, 255 [“In a society based on law, the concept of agreement and consent should be given a weight and dignity of its own.

For example, in *People v. Brown*<sup>66</sup> an officer received consent to search a traffic violator's fanny pack which, as it turned out, contained methamphetamine. In ruling the search was lawful the court observed:

[The officer] requested permission to search the fanny pack while awaiting the results of the warrant check, which arrived in a minute. Thus, the request to search did not unduly prolong the detention or extend the period justified by the valid traffic stop.

On the other hand, in *U.S. v. Chavez-Valenzuela*<sup>67</sup> the Ninth Circuit invalidated a search that was made under circumstances that were substantially the same as those in *Brown*. In *Chavez-Valenzuela* a CHP officer stopped Chavez-Valenzuela on a freeway for following too closely. While waiting for a license and registration check, the officer asked Chavez-Valenzuela some questions about his travel plans and employment. When the DMV check showed that everything was in order, the officer handed him his license and registration, then asked if he had any drugs in his car. He said no. The officer then sought and received his consent to search the car which, as it turned out, contained much methamphetamine.

Although the officer's two questions could not have taken more than ten or 15 seconds, the court ruled they unduly prolonged the detention and, therefore, the consent was invalid. Said the court, "[The officer] lacked the requisite reasonable suspicion when he continued to detain Chavez-Valenzuela after completing the traffic stop and asked him if he was carrying drugs, thereby violating Chavez-Valenzuela's Fourth Amendment rights."

There is also a California case, *People v. Lingo*,<sup>68</sup> in which such a consent search was invalidated, but the result is easier to understand because the request to search was preceded by lengthy questioning.

#### Field contact cards

Although field contact cards serve a legitimate police function,<sup>69</sup> in the absence of some focused suspicion on the detainee there is usually no justification for prolonging a stop for the purpose of completing one. As a practical matter, however, officers can usually obtain all the necessary information—name, address, and so forth—as a result of the traffic stop.<sup>70</sup>

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Police officers act in full accord with the law when they ask citizens for consent."]; *Schneekloth v. Bustamonte* (1973) 412 US 218, 231-2 ["Consent searches are part of the standard investigatory techniques of law enforcement agencies."]; *Florida v. Jimeno* (1991) 500 US 248, 250-1 ["(W)e have long approved consensual searches because it is no doubt reasonable for the police to conduct a search once they have been permitted to do so."]; *People v. Avalos* (1996) 47 Cal.App.4<sup>th</sup> 1569, 1577 ["A search conducted pursuant to consent is a constitutionally permissible and wholly legitimate aspect of effective police activities."].

<sup>66</sup> (1998) 62 Cal.App.4<sup>th</sup> 493.

<sup>67</sup> (9<sup>th</sup> Cir. 2001) 268 F.3d 719.

<sup>68</sup> (1970) 3 Cal.App.3d 661.

<sup>69</sup> See *People v. Harness* (1983) 139 Cal.App.3d 226, 233 ["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 inform."].

<sup>70</sup> See *People v. Harness* (1983) 139 Cal.App.3d 226, 230-1 ["All that is required is identification and description of the detainee (which may be taken from the driver's license and visually observed), the location and time of the stop, and the interviewee's explanation of what he was doing."]. **NOTE:** Under *People v. McGaughran* (1979) 25 Cal.3d 577 officers may run a warrant check on a driver who had committed a traffic infraction for which the driver could have been

## ALTERNATIVE PROCEDURES

When officers suspect a traffic violator or his passengers are involved in criminal activity, it may be possible to conduct an investigation outside the confines of the traffic stop procedure by converting the stop into a contact or an investigative detention. Even if the stop cannot be converted into a contact or detention, it is sometimes possible to conduct a concurrent traffic-criminal investigation.

**CONVERT STOP INTO CONTACT:** One of the most effective ways of conducting an investigation after making a traffic stop is to convert the stop into a consensual encounter or “contact.” 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.”<sup>71</sup>

A traffic stop becomes a contact at the point a reasonable person in the violator’s position would have believed he was free to terminate the encounter.<sup>72</sup> To make this happen, officers must do two things. First, they must return the violator’s driver’s license, registration, and any other documents they were given for inspection.<sup>73</sup> This is because, as the court noted in *U.S. v. Sandoval*, “[N]o reasonable person would feel free to leave without such documentation.”<sup>74</sup>

Second, they must inform the violator he is now free to go. Although it may be possible to convey this information without saying the words “you’re free to go,”<sup>75</sup> as a practical matter it’s very difficult.<sup>76</sup> As a corollary to this requirement, there must not

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taken into custody. (At p. 583) It would appear that the rationale for this ruling would apply to the process of completing a field contact card because it would not appreciably extend the duration of the detention.

<sup>71</sup> *U.S. v. Anderson* (10<sup>th</sup> Cir. 1997) 114 F.3d 1059, 1064. ALSO SEE *U.S. v. McSwain* (10<sup>th</sup> Cir. 1994) 29 F.3d 558, 562.

<sup>72</sup> See *Florida v. Bostick* (1991) 501 US 429, 439.

<sup>73</sup> 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 indicated 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. Beck* (8<sup>th</sup> Cir. 1998) 140 F.3d 1129,1135; *U.S. v. Sullivan* (4<sup>th</sup> 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* (8<sup>th</sup> Cir. 1996) 81 F.3d 775, 779; *U.S. v. Anderson* (10<sup>th</sup> Cir. 1997) 114 F.3d 1059, 1064; *U.S. v. Werking* (10<sup>th</sup> Cir. 1990) 915 F.2d 1404, 1409; *U.S. v. Holt* (10<sup>th</sup> 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.”]. COMPARE *U.S. v. Walker* (10<sup>th</sup> Cir. 1991) 933 F.2d 812, 817 [traffic stop not converted into a contact because the officer “retained defendant’s driver’s license and registration during the entire time he questioned the defendant.”].

<sup>74</sup> (10<sup>th</sup> Cir. 1994) 29 F.3d 537, 540.

<sup>75</sup> See *Ohio v. Robinette* (1996) 519 US 33; *United States v. Mendenhall* (1980) 446 US 544, 555; *People v. Profit* (1986) 183 Cal.App.3d 849, 877; *U.S. v. Anderson* (10<sup>th</sup> Cir. 1997) 114 F.3d 1059, 1064.

<sup>76</sup> 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

have been any circumstances that reasonably indicated that, despite what the officers said, the suspect was not, in fact, free to leave.<sup>77</sup> If these two requirements are met, officers may ask the violator if he is willing to answer some additional questions, consent to a search, wait for a showup, or whatever else officers need to do to confirm or dispel their suspicions. If he agrees, the stop becomes a consensual encounter.

For example, in *People v. Galindo*<sup>78</sup> an officer stopped a car for speeding and wrote a citation. After the driver signed the citation and received a copy, he started walking back to his car. At that point, the officer sought and received consent from the driver and his passenger to search the car for drugs and guns. During the search, officers found cocaine and heroin. In ruling the search was valid, the court said:

Nothing in the record suggests that [the driver or passenger] had any objective reason to believe that they were not free to end the discussion and proceed on their way. The record fully supports the People's claim that [the officer's] postcitation inquiry of [the passenger] could properly be initiated without objective justification of criminal activity and resulted in no restraint of [the passenger's] liberty.

**CONVERT TO INVESTIGATIVE DETENTION:** A traffic stop may be converted into an investigative detention if officers, while engaged in their lawful duties, see something that provides reasonable suspicion.<sup>79</sup> The subject of investigative detentions is covered in the article beginning on page one.

**CONDUCT CONCURRENT INVESTIGATIONS:** It is sometimes possible for officers to conduct a limited investigation of the crime for which the violator is suspected at the same time they are carrying out their duties pertaining to the traffic violation. Concurrent investigations of this sort are entirely proper. As the Court of Appeal observed, “[I]nvestigative activities beyond the original purpose of a traffic stop, including warrant checks, are permissible as long as they do not prolong the stop beyond the time it would otherwise take.”<sup>80</sup>

For example, in *People v. Bell*<sup>81</sup> the court noted that the officer's conversation with the driver “took place while he was writing the speeding ticket and did not add to the delay otherwise resulting from the traffic stop.” And in *U.S. v. Shabazz*<sup>82</sup> the court noted that when the officers questioned the driver about matters not pertaining to the traffic

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voluntariness and consent.”]; *People v. Daugherty* (1996) 50 Cal.App.4<sup>th</sup> 275, 280 [officer “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* (8<sup>th</sup> Cir. 1998) 140 F.3d 1129,1135; *Morgan v. Woessner* (9<sup>th</sup> 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.”].

<sup>77</sup> See *U.S. v. Ramos* (8<sup>th</sup> Cir. 1994) 42 F3d 1160 [although the driver's license was returned to him, he was asked to remain in the patrol car while the officer spoke with the passenger]; *U.S. v. Galvan-Muro* (8<sup>th</sup> Cir. 1998) 141 F.3d 904, 907 [discussing *Ramos*, supra, the court noted, “Even though the officer has 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.”].

<sup>78</sup> (1991) 229 Cal.App.3d 1529.

<sup>79</sup> See *People v. Franklin* (1985) 171 Cal.App.3d 627, 634 [officer saw evidence pertaining to a robbery in a car stopped for a Vehicle Code violation]; *Whren v. United States* (1996) 517 US 806.

<sup>80</sup> *People v. Brown* (1998) 62 Cal.App.4<sup>th</sup> 493, 498. **ALSO SEE** *U.S. v. Garcia* (9<sup>th</sup> Cir. 2000) 205 F.3d 1182, 1187 [brief questioning occurred while officer was waiting for the result of computer check].

<sup>81</sup> (1996) 43 Cal.App.4<sup>th</sup> 754, 767.

<sup>82</sup> (5<sup>th</sup> Cir. 1993) 993 F.2d 431, 437.



violation “the officers were waiting for the results of the computer check. Therefore, the questioning did nothing to extend the duration of the initial, valid seizure.”