

## CHAPTER 7

### SOBRIETY CHECKPOINTS

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#### 7.1 GENERALLY

A sobriety checkpoint involves the stopping of every vehicle or a specified sequence of vehicles at a predetermined, fixed location. As the name suggests, sobriety checkpoints are conducted to detect drivers impaired by alcohol or other drugs. Unlike the more traditional law enforcement method of apprehending impaired drivers, checkpoints allow officers to stop vehicles without any suspicion of wrongdoing.

Sobriety checkpoints have been challenged in Utah and other states by arguing that a checkpoint is an unreasonable search and seizure.

The Fourth Amendment of the United States Constitution protects individuals from unreasonable searches and seizures conducted by the government. Searches involve intrusive police investigative activity, while seizures involve stops and arrests by police. This clause protects one's person, as well as anything in which one has a reasonable expectation of privacy.

A checkpoint is a seizure. Motorists generally have an expectation of privacy in their vehicles, and a checkpoint intentionally restricts or delays their movement. To be unconstitutional, however, the seizure must also be "unreasonable." A seizure is generally reasonable under the Fourth Amendment when there is reasonable suspicion of criminal activity. The reasonable suspicion must also be individualized. For example, when a

police officer sees a motorist swerving and driving erratically, the officer can detain the motorist due to the suspicion that he/she is driving while impaired. A police officer cannot, however, randomly stop a vehicle simply because it is late at night and the officer wants to check whether the driver is impaired – the officer must reasonably suspect that the motorist has committed a violation. It is clear that checkpoints are not conducted on the basis of reasonable suspicion – vehicles are systematically stopped without any suspicion of wrongdoing.

## 7.2 CONSTITUTIONALITY

In *United States v. Martinez-Fuerte*, 428 U.S. 543 (1976), the United States Supreme Court created an exception to the *Terry* rule for administrative checkpoints. Yet not all states have statutory provisions allowing such practices.

Utah has enacted Utah Code Ann. §77–23-104 which provides for checkpoints so long as certain conditions are met. The Utah Supreme Court considered the constitutionality of this statute in *State v. Debooy*, 996 P.2d 546 (Utah 2000). The court first stated that,

The search and seizure provisions of both the United States and Utah Constitutions prohibit sweeping, dragnet-type detentions of ordinary people engaged in peaceful, ordinary activities. Under both constitutions, the general rule is that "specific and articulable facts . . . taken together with rational inferences from those facts, [must] reasonably warrant" the particular intrusion. *Terry v. Ohio*, 392 U.S. 1, 21, 20 L. Ed. 2d 889, 88 S. Ct. 1868 (1968).

*Id.*, at 549.

Although the court felt that the checkpoint at issue in *Debooy* was unreasonable and violated both the statute and the constitution, the court clearly stated that although, "we find that the checkpoint in the present case violates the Fourth Amendment and article I, section 14 of the Utah Constitution. We sustain the constitutionality of section 77-23-104, but determine that the checkpoint in this case was not properly authorized under its provisions". *Emphasis added Id.*, at 554.

## 7.3 STATUTE

The authorizing statute for administrative checkpoints is Utah Code Ann. §77-23-101 *et. seq.* which reads:

77-23-101. Title of act.

Sections 77-23-101 through 77-23-105 may be cited as the "Administrative Traffic Checkpoint Act."

77-23-102. Definitions.

As used in this part:

(1) "Administrative traffic checkpoint" means a roadblock procedure where enforcement officers stop all, or a designated sequence of, motor vehicles traveling on highways and roads and subject those vehicles to inspection or testing and the drivers or occupants to questioning or the production of documents.

(2) "Command level officer" includes all sheriffs, heads of law enforcement agencies, and all supervisory enforcement officers of sergeant rank or higher.

(3) "Emergency circumstances" means circumstances where enforcement officers reasonably believe road conditions, weather conditions, or persons present a significant hazard to persons or the property of other persons.

(4) "Enforcement officer" includes:

(a) peace officers as defined in Title 53, Chapter 13, Peace Officer Classifications;

(b) correctional officers as defined in Title 53, Chapter 13;

(c) special function officers as defined and under the restrictions of Title 53, Chapter 13; and

(d) federal officers as defined in Title 53, Chapter 13.

(5) "Magistrate" includes all judicial officers enumerated in Subsection 77-1-3(4).

(6) "Motor vehicle" includes all vehicles as defined in Title 41, Chapter 1a.

77-23-103. Circumstances permitting an administrative traffic checkpoint.

A motor vehicle may be stopped and the occupants detained by an enforcement officer when the enforcement officer:

(1) is acting pursuant to a duly authorized search warrant or arrest warrant;

(2) has probable cause to arrest or search;

(3) has reasonable suspicion that criminal activity has occurred or is occurring;

(4) is acting under emergency circumstances; or

(5) is acting pursuant to duly authorized administrative traffic checkpoint authority granted by a magistrate in accordance with Section 77-23-104.

77-23-104. Written plan - Approval of magistrate.

(1) An administrative traffic checkpoint may be established and operated upon written authority of a magistrate.

(2) A magistrate may issue written authority to establish and operate an administrative traffic checkpoint if:

(a) a command level officer submits to the magistrate a written plan signed by the command level officer describing:

(i) the location of the checkpoint including geographical and topographical information;

(ii) the date, time, and duration of the checkpoint;

(iii) the sequence of traffic to be stopped;

(iv) the purpose of the checkpoint, including the inspection or inquiry to be conducted;

(v) the minimum number of personnel to be employed in operating the checkpoint, including the rank of the officer or officers in charge at the scene;

(vi) the configuration and location of signs, barriers, and other means of informing approaching motorists that they must stop and directing them to the place to stop;

(vii) any advance notice to the public at large of the establishment of the checkpoint; and

(viii) the instructions to be given to the enforcement officers operating the checkpoint;

(b) the magistrate makes an independent judicial determination that the plan appropriately:

(i) minimizes the length of time the motorist will be delayed;

(ii) minimizes the intrusion of the inspection or inquiry;

(iii) minimizes the fear and anxiety the motorist will experience;

(iv) minimizes the degree of discretion to be exercised by the individual enforcement officers operating the checkpoint; and

(v) maximizes the safety of the motorist and the enforcement officers; and

(c) the administrative traffic checkpoint has the primary purpose of inspecting, verifying, or detecting:

(i) drivers that may be under the influence of alcohol or drugs;

(ii) license plates, registration certificates, insurance certificates, or driver licenses;

(iii) violations of Title 23, Wildlife Resources Code of Utah; or

(iv) other circumstances that are specifically distinguishable by the magistrate from a general interest in crime control.

(3) Upon determination by the magistrate that the plan meets the requirements of Subsection (2), the magistrate shall sign the authorization and issue it to the command level officer, retaining a copy for the court's file.

(4) A copy of the plan and signed authorization shall be issued to the checkpoint command level officer participating in the operation of the checkpoint.

(5) Any enforcement officer participating in the operation of the checkpoint shall conform his activities as nearly as practicable to the procedures outlined in the plan.

(6) The checkpoint command level officer shall be available to exhibit a copy of the plan and signed authorization to any motorist who has been stopped at the checkpoint upon request of the motorist.

### **7.3.1 PENALTY FOR FAILURE TO STOP AT CHECKPOINT**

77-23-105. Failure to stop - Criminal liability.

Any person who intentionally and knowingly passes, without stopping as required, any administrative traffic checkpoint operated under the authority of a magistrate as provided in Section 77-23-104 is guilty of a class B misdemeanor.

### **7.4 EFFECT OF NON-COMPLIANCE WITH STATUTE**

Since the statute sets forth a fairly easy-to-follow checklist of requirements for a valid checkpoint, agencies should carefully follow the steps and assure that the checkpoint is narrowly constructed so as not to run afoul of the courts. If the checkpoint is overbroad or proper judicial approval is not obtained, any evidence obtained at the checkpoint will be suppressed.

The good faith exception will not apply to admit evidence obtained after making a warrantless administrative traffic checkpoint stop which was conducted pursuant to a judicially approved plan that violated both this section and the United States Constitution. *State v. Deherrera*, 965 P.2d 501 (Utah Ct. App. 1998).

Further, if “independent” reasonable suspicion is obtained due to an inappropriate checkpoint (such as an illegal u-turn), that evidence will also be suppressed, since it was the illegal checkpoint that precipitated the additional activity. *Debooy*, at 548.

In short, it is critical that the statute be very carefully complied with in order to preserve any evidence obtained during the checkpoint.

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