

TO: LVPPA Members
FROM: David Roger, General Counsel
DATE: August 22, 2013
RE: Constitutional and Statutory Limitations on Length of Vehicle Stops

Officers frequently ask how long they have to conduct a vehicle stop. Additionally, officers inquire whether they may exceed the one (1) hour restriction set forth in Nevada's statute. The following discussion will address these issues.

The United States Supreme Court's opinion, in *Terry v. Ohio*, 392 U.S.1, 88 S.Ct. 1868 (1968), is codified by NRS 171.123:

1. Any peace officer may detain any person whom the officer encounters under circumstances which reasonably indicate that the person has committed, is committing or is about to commit a crime.

3. The officer may detain the person pursuant to this section only to ascertain the person's identity and the suspicious circumstances surrounding the person's presence abroad. Any person so detained shall identify himself or herself, but may not be compelled to answer any other inquiry of any peace officer.

The length and scope of a stop is limited by the purpose of the investigation. See, *Illinois v. Caballes*, 543 U.S. 405, 407, 125 S.Ct. 834, (2005). While there is no bright line rule, a reviewing court will examine the reasonableness of the officer's investigative steps:

"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, during which time it was necessary to detain the defendant. A court making this assessment should take care to consider whether the police are acting in a swiftly developing situation, and in such cases the court should not indulge in unrealistic second-guessing. A creative judge engaged in *post hoc* evaluation of police conduct can almost always imagine some alternative means by which the objectives of the police might have been accomplished. But "[t]he fact that the protection of the public might, in the abstract, have been accomplished by 'less

intrusive' means does not, itself, render the search unreasonable." 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." (citations omitted).

United States v. Sharpe, 470 U.S. 675, 686, 105 S.Ct. 1568, 1575 (1985).

The Court in *Beckman v. State*, 129 Nev. Adv. Op. 51, --- P.3d --- (2013), recognized that officers must conduct certain investigatory tasks, during traffic stops that do not render the detention unreasonably long:

During the course of a lawful traffic stop, officers may complete a number of routine tasks. For example, they may ask for a driver's license and vehicle registration, run a computer check, and issue a ticket. Officers may also inquire about the occupants' destination, route, and purpose. And if necessary, law enforcement may conduct a brief, limited investigation for safety purposes. (Citations omitted.)

Gama v. State, 112 Nev. 883, 920 P.2d 1010 (1996) is an example of a constitutionally sound traffic stop. In *Gama*, a NHP Trooper learned that Gama might be transporting drugs in rural Nevada. The Trooper observed Gama's vehicle and followed it for several miles. During that time, while waiting for drug interdiction officers to arrive in the area, the Trooper observed Gama violate several traffic laws. Once a K-9 officer caught up with Gama, the Trooper initiated a traffic stop. While the Trooper issued Gama citations, the K-9 inspected the exterior of the car and signaled there were drugs inside. Police arrested Gama for PCS. The Nevada Supreme Court held that, "...the stop was neither unreasonably lengthy nor unreasonably intrusive for a traffic stop." *Id.* 112 Nev. at 838, 920 P.2d at 1013.

Conversely, a court will likely conclude that an officer's detention of a citizen is unreasonable if the officer prohibits a citizen from leaving, after issuing traffic citations, while waiting for K-9 to arrive. See, *Illinois v. Caballes*, *supra*.

An officer may extend the duration of the stop in a limited number of situations. The court in *Beckman*, *supra*, explained:

"A prolonged stop may be reasonable in three limited circumstances: when the extension of the stop was consensual, the delay was de minimis, or the officer lawfully receives information during the traffic stop that creates a reasonable suspicion of criminal conduct.

First, a prolonged traffic stop is not unreasonable if the encounter becomes consensual. After all, a consensual encounter is not a seizure, and thus, the Fourth Amendment is not implicated.

Second, a modest delay may be reasonable, depending on the circumstances surrounding the stop. For example, other jurisdictions have permitted a two-minute delay, *United States v. McBride*, 635 F.3d 879, 883 (7th Cir.2011); *United States v. Chaney*, 584 F.3d 20, 26 (1st Cir.2009), and a four-minute delay, *United States v. Alexander*, 448 F.3d 1014, 1017 (8th Cir.2006), as de minimis intrusions on a driver's liberty.

Third, a prolonged stop is permissible if the results of the initial stop provide an officer with reasonable suspicion of criminal conduct, thereby creating a new Fourth Amendment event. See, e.g., *State v. Perez*, 181 Conn. 299, 435 A.2d 334, 338 (Conn.1980) (when "a police officer's suspicions upon a lawful stop are further aroused, the stop may be prolonged and the scope enlarged as required by the circumstances"), *overruled on other grounds by State v. Altrui*, 188 Conn. 161, 448 A.2d 837, 846 n. 6 (1982); *Estrada v. Rhode Island*, 594 F.3d 56, 64 (1st Cir.2010) (recognizing that information gathered during a traffic stop may provide reasonable suspicion of criminal conduct that will justify extending the stop)."

That said, Nevada law is unique, as the legislature has limited detentions to a maximum of 60 minutes. NRS 171.123 (4) provides, "A person must not be detained longer than is reasonably necessary to effect the purposes of this section, and in no event longer than 60 minutes. The detention must not extend beyond the place or the immediate vicinity of the place where the detention was first effected, unless the person is arrested."

The 60-minute limitation is absolute and without exceptions. *Barrios-Lomeli v. State*, 114 Nev. 779, 961 P.2d 750 (1997). Therefore, unless a person voluntarily

agrees to stay, an officer must either establish sufficient probable cause for arrest, or release the citizen.