

ROADBLOCKS BY LAW ENFORCEMENT

ACLU of Arkansas

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Law enforcement officials are allowed to use roadblocks for specific, limited purposes. Whether a roadblock is legal depends on the facts of that roadblock. The legality of the roadblock depends on the primary purpose of the roadblock. If a roadblock's primary purpose is general crime control (such as searching for illegal drugs), the roadblock would generally violate the Fourth Amendment because general crime control is not a valid primary purpose. However, ensuring road safety is a valid primary purpose, so roadblocks with that goal may be lawful. Sobriety checkpoints and checkpoints to verify drivers' licenses and vehicle registrations are two examples of roadblocks motivated by road safety, so those two types of checkpoints have a valid primary purpose. If a roadblock is operated to seek information from local motorists about a recent crime or to prevent an imminently threatened crime (for example, to prevent a terrorist attack about which law enforcement has been warned), these would also be valid primary purposes.

If the roadblock has a valid primary purpose, detention of motorists may still be unlawful if the circumstances fail a three part test. The test looks at the seriousness of the public concern being addressed by the roadblock, the effectiveness of the roadblock in addressing that public concern, and the severity of the interference with individual liberty during the stops. The severity of the interference with individual liberty is measured two ways: objectively (looking at the duration of the seizure and the intensity of the investigation); and subjectively (looking at the fear and surprise felt by law-abiding motorists at the prospect of being stopped at a roadblock). For sobriety checkpoints, for example, courts have generally said that deterring drunk driving is a very serious public concern, and that removing even a few drunk drivers from the road makes the roadblock an effective way of addressing the problem. Moreover, sobriety checkpoints usually require less than a minute of individualized attention per car, and if all cars are receiving equal attention, courts assume that law-abiding citizens would not feel afraid or surprised once it is their turn to speak to the officers at the roadblock.

When a car arrives at a roadblock, if the law enforcement officer observes something which gives a reasonable suspicion that a felony or violent misdemeanor has been or is being committed, the officer may request that the driver go to a different area out of traffic for further questioning. The officer may request the driver's consent to search the vehicle, but the driver is not required to give that consent. If the officer has probable cause to believe that illegal activity has occurred, a vehicle may be searched even if the driver did not consent to the search.

Officers may subject the driver and passengers of a car at a roadblock to questions to obtain certain information related to the reason for the stop or for reasonable suspicion. An officer may arrest a driver or passenger pursuant to statute if a person knowingly obstructs, impairs, or hinders the performance of a lawful governmental function. In other words, officers may arrest the driver or passenger if they do not provide answers to questions from law enforcement only if the questions posed by the officer are in aid of the investigation or prevention of crime. Otherwise, the driver or passenger must be suspected of criminal activity and that suspicion must be supported by reasonable

suspicion. An officer may also obtain information if it is required [instead of useful to] for the officer's safety. Arkansas Rules of Criminal Procedure prohibit an officer from indicating that a person is legally obligated to furnish information if no such obligation exists. An officer may not arrest a suspect for failure to identify himself if the request for identification is not reasonably related to the circumstances justifying the stop.

Drivers at a road block have the right to ask law enforcement officers for their name and jurisdiction, including written identification, if possible. The driver may also ask for the reason for the stop.

This document does not constitute legal advice. The facts and circumstances of every case are different. Thus, if you feel your rights have been violated, you should consult an attorney about your specific situation. If you believe that racial profiling occurred, you should contact that police department or sheriff's office to file a complaint, and also report the encounter to the Arkansas Attorney General's office by calling 1-877-246-4404. You can contact the ACLU of Arkansas in writing at: 904 West 2nd, Suite 1, Little Rock, AR, 72205, or the national ACLU's hotline at 1-877-634-5454, or by reporting on-line at <http://aclu.org/profiling>.

People who feel that their rights have been violated by the operation of a roadblock should make note of as many facts about the roadblock incident as possible.

- ❑ Where was the roadblock?
- ❑ When (date and time) did you encounter the roadblock?
- ❑ Do you have any idea why there might have been a roadblock at that location at that time? For example, is it an area where a lot of car accidents occur? Is it a high crime area? Is it near a bar? Did any officer at the roadblock indicate why that location was chosen?
- ❑ How were you alerted to the roadblock?
 - If you saw a sign that said a roadblock was ahead, what else did the sign say? Did the sign identify what kind of roadblock was being operated, or give any other information about the roadblock? (Example: stating that it was a sobriety checkpoint, or that there were drug-sniffing dogs ahead)
- ❑ What did you observe about the law enforcement presence at the roadblock?
 - How many officers and law enforcement vehicles did you see?
 - What kind of officers were they? State police? Local police? Sheriff's deputies? Highway Patrol? Immigration (ICE) officers?
 - How did you know what kind of officers they were? Did someone tell you? If so, who told you, and what did they say?
 - How were the officers dressed? Uniforms? Protective clothing?
- ❑ What did you observe about other cars near the roadblock?
 - Did you see any cars that appeared to take action to avoid the roadblock, such as by turning around or by leaving the highway by turning off at a marked exit? If so, did you see any officers take any action to stop the driver who seemed to be avoiding the roadblock?
 - Was every car being stopped at the roadblock? Every other car? Every fifth car? Random cars?
 - About how long did officers spend with each car?

- If some cars were waved through or stopped for a shorter or longer amount of time than others, could you see any distinguishing features of the drivers who were being treated differently? For example, was the driver's driving behavior erratic? Was the driver's apparent race or ethnicity different from other drivers? Was the driver's license plate from a different state?
- Did you see other drivers being directed to an area away from traffic? How many? Did the drivers who were being directed to a separate area have any distinguishing features, such as apparent race or ethnicity, an out of state license plate, or were they driving erratically before reaching the roadblock?
- What were your experiences when you reached the roadblock?
 - If you were stopped at the roadblock and the officers' pattern of stopping cars had seemed random or unclear, did you feel fear or surprise as a result of being stopped?
 - What did the officer say to you about the roadblock or its purpose?
 - What questions were you asked?
 - Were you asked for your driver's license and vehicle registration? Did you provide these documents?
 - Did any officer ask for your name? What did you say?
 - Did any officer ask you about your immigration status? What did they ask? What did you say?
 - What other questions were you or your passengers asked?
 - How long were you at the roadblock?
 - Did any officer direct you to an area out of traffic for further questioning or investigation? If so, did the officer say why further questioning was needed? If so, what did the officer give as the explanation?
 - Did any officer request your consent to search your vehicle?
 - Did the officer explain why a search was being requested?
 - Did you feel free to decline to consent to a search?
 - Did you consent to a search?
 - If you did not consent to a search, did the officer search your vehicle anyway?
 - Were you or your fellow passengers cited or charged with anything? What?
 - Were you taken into custody by law enforcement officers? When?
 - Did you ask to speak with an attorney? What was the response?
 - Describe the officers' actions
 - Did the officers act in a threatening or intimidating manner? If so, please describe in detail any physical or verbal abuse
 - Did any officers use any racial epithets or slurs?
 - Did any officers make any remarks about your national origin or other countries?

Things to remember if you encounter a roadblock:

- ❑ If you are observed attempting to avoid a roadblock, that could raise suspicions and result in your car being pulled over by a law enforcement officer.
- ❑ If pulled over or upon arriving at the roadblock, upon being requested to do so, you must show the officer your driver's license, registration, and proof of insurance.
- ❑ The officer must obtain your consent to search your vehicle unless he or she has probable cause to suspect criminal activity. You are not required to consent to a search, and police cannot arrest you for refusing to consent to a search. In order to protect yourself, you should make it clear that you do not consent to a search.
- ❑ If you are given a ticket, you should sign it; otherwise, you can be arrested. You can always fight the ticket in court later.
- ❑ If you do not have a valid driver's license, **do not drive**. Having only licensed drivers operating cars is important to ensuring the safety of the roads, and police would be within their powers to detain a driver at a checkpoint for not having a valid driver's license.
- ❑ If you have been drinking or ingesting other substances that could impair your driving, **do not drive**. Even if the roadblock is not being operated as an official "sobriety checkpoint," the officers are within their powers to detain a driver who appears to be under the influence.