

Summary of Decisions Concerning Constitutionality of Sobriety Checkpoints

Laws as of March 2002

- Alabama **Upheld under Federal Constitution.** Driving into private driveway to avoid a checkpoint justified a stop. *Smith v. State*, 515 So. 2d 149 (Ala. Cr. App. 1987). See also *Cains v. State*, 555 So. 2d 290 (Ala. Cr. App. 1989), *Brunson v. State*, 580 So.2d 62 (Ala. Cr. App. 1991), and *McInnish v. State*, 584 So.2d 95 (Ala. Cr. App. 1991). General checkpoint to deter “trouble” impermissible under *Hagood v. Town of Town Creek*, 628 So.2d 1057 (Ala. Cr. App. 1993).
- Alaska **No state authority.**
- Arizona **Upheld under Federal Constitution.** *State v. Superior Court*, 143 Ariz. 45, 691 P.2d 1073(1984). In *State v. Tykwinski*, 824 P.2d 761 (Ariz. App. 1991), defendants tried to suppress evidence obtained at a checkpoint. Because the checkpoint itself was legal, the evidence was admitted.
- Arkansas **Upheld under State and Federal Constitution.** *Brouhard v. Lee*, 125 F.3d 656 (8th Cir. 1997), *Mullinax v. State*, 938 S.W.2d 801 (Ark. 1997). See also *Coffman v. State*, 26 Ark. App. 45, 759 S.W.2d 573 (1988); *Tims v. State*, 26 Ark.App. 102, 760 S.W.2d 78(1988); *Camp v. State*, 26 Ark.App. 299, 764 S.W.2d 463 (1989).
- California **Upheld under State and Federal Constitution.** *Ingersoll v. Palmer*, 743 P.2d 1299 (Cal. 1987), *People v. In Re Richar T.*, 750 P.2d 297 (Calif. 1988) (No. 88-318), cert. den., 488 U.S. 986 (1988), 109 S. Ct. 542, 102 L.Ed.2d 572. In *People v. Banks*, the California Supreme Court held that advance publicity is not necessary for a checkpoint to be valid. 6 Cal.4th 926, 863 P.2d 769, 25 Cal.Rptr.2d 524 (1993).
- Colorado **Upheld under State and Federal Constitution.** *People v. Rister*, 803 P.2d 483 (Colo. 1990), *Orr v. People*, 803 P.2d 509 (Colo. 1990). The *Rister* court held that the Colorado Constitution should be interpreted as coextensive with the federal constitution with regard to checkpoints.
- Connecticut **Upheld under State Constitution.** *State v. Mikolinski*, 775 A.2d 274 (Conn. 2001).
- Delaware **Upheld under state law and Federal Constitution.** *Delaware v. Prouse*, 440 U.S. 648 (1979). A trial court has held that a legally executed U-turn in advance of a checkpoint did not justify a stop. *Howard v. Voshell*, 621 A.2d 804 (Del. Super. 1992).
- District of Columbia **Upheld under Federal Constitution.** *Galberth v. U.S.*, 590 A.2d 990 (D.C. App. 1991); *U.S. v. McFayden*, 865 F.2d 1306 (D.C. Cir. 1989) upheld license and registration checks. The *McFayden* court found that when the principal purpose of a checkpoint is to regulate traffic using license and registration checks, the fact that the effort has benefits with regard to other offenses does not make an otherwise legal checkpoint invalid. *Duncan v. U.S.*, 629 A.2d 1 (D.C. App. 1993) follows *McFayden*.
- Florida **Upheld under Federal Constitution.** *State v. Jones*, 483 So. 2d 433 (1986). *Campbell v. State*, 679 So.2d 1168 (Fla. 1996) found a checkpoint deficient under *Jones* because the written guidelines were insufficient, especially with regard to the method for choosing which vehicle(s) to stop. A delay of less than five minutes before a driver was asked to exit the vehicle was found to be permissible. *Cahill v. State*, 595 So.2d 258 (Fla. App. 4 Dist. 1992).
- Georgia **Upheld under State and Federal Constitution.** *State v. Golden*, 318 S.E.2d 693 (Ga. App. 1984); *Evans v. State*, 380 S.E.2d 332 (Ga. App. 1989); *Seagraves v. State*, 442 S.E.2d 312 (Ga. App. 1994); *Hooten v. State*, 442 S.E.2d 836 (Ga. App. 1994); *Burns v. State*, 454 S.E.2d

152 (Ga. App. 1995); *Brent v. State*, 510 S.E.2d 14 (Ga. 1998). Abnormal or unusual actions taken to avoid a roadblock may give an officer a reasonable suspicion of criminal activity even when the evasive action is not illegal; however, completely normal driving, even if it incidentally evades the roadblock, does not justify a Terry-type stop. *Taylor v. State*, 249 Ga. App. 733 (May 2001). See also, *Castillo v. State*, 502 S.E.2d 261 (Ga. App. 1998); *LaFontaine v. State*, 497 S.E.2d 367 (Ga. 1998); and *Payne v. State*, 502 S.E.2d 526 (Ga. App. 1998).

- Hawaii **Authorized by statute.** HAW. REV. Stat. 286-162.5 and 286-162.6. Also upheld under an unpublished opinion, *Hawaii v. Nagamine* (No. B-91009) (Hawaii 1985). Checkpoint standards are laid out in internal police regulation, Notice 86-10 which was discussed in *State v. Aguinaldo*, 782 P.2d 1225 (Hawaii 1989) and *State v. Fedak*, 825 P.2d 1068 (Hawaii App. 1992).
- Idaho **Illegal under state law.** *State v. Henderson*, 756 P.2d 1057 (Idaho 1988), held legislative authority was required for a checkpoint. There is no such authority absent particularized suspicion in the Idaho statute that describes the circumstances under which police may put up a roadblock. *State v. Medley*, 898 P.2d. 1093 (Idaho 1995) held a fish and game checkpoint invalid under the U.S. Constitution. The *Medley* Court noted that it was not addressing the issue of whether checkpoints violate the Idaho Constitution.
- Illinois **Upheld under Federal Constitution.** *People v. Bartley*, 486 N.E.2d 880 (Ill. 1985), cert. den. 475 U.S. 1068 (1986); checkpoints to enforce city sticker laws upheld if proper procedures are followed. *People v. Taylor*, 630 N.E.2d 1331 (Ill. App. 3 Dist. 1994).
- Indiana **Upheld under State Constitution.** *Indiana v. Gerschoffer*, Supreme Court of Indiana, No. 71S05-0102-CR-106, March 5, 2002. Previously, checkpoints had been conducted in Indiana under *Garcia*, which held checkpoints legal under the federal constitution. *State v. Garcia*, 500 N.E.2d 158 (Ind. 1986), cert. den. 481 U.S. 1014 (1987); *Snyder v. State*, 538 N.E.2d 961 (Ind. App. 4 Dist. 1989). In the *Snyder* case, the court held that avoiding a checkpoint was sufficient cause to conduct a stop. One court in Indiana has that the state failed to prove that the checkpoint sufficiently advanced the state's interest in conducting it. *Covert v. State*, 612 N.E.2d 592 (Ind. App. 5 Dist. 1993). A drug interdiction checkpoint was held a violation of the U.S. Constitution in *Indianapolis v. Edmond*, 121 S.Ct. 447 (2000).
- Iowa **Not permitted because statute authorizing roadblocks controls and does not authorize sobriety checkpoints.** 321K.1. DUI arrests may be made at roadblocks authorized by statute. *State v. Day*, 528 N.W.2d 100 (Iowa 1995). Absent statutory impediments, Iowa courts have upheld the constitutionality of checkpoints. *State v. Loyd*, 530 N.W. 2d 708); *State v. Riley*, 377 N.W.2d 242 (Iowa App. 1985). Se also *State v. Hillesheim*, 291 N.W.2d. 314 (Iowa 1980). *State v. Heminover*, 2000 WL 564049 (Iowa App.), held avoidance does not justify stop. It also found the roadblock did not comply with guidelines.
- Kansas **Upheld under both state law and Federal Constitution.** *State v. Deskins*, 673 P. 2d 1174 (Kansas 1983). *Davis v. Kansas Dept. of Revenue*, 843 P.2d 260 (Kan. 1992), held that legislative authorization is not necessary for checkpoints. See also *State v. Baker*, 850 P.2d 885 (Kan. 1993) and *State v. Campbell*, 875 P.2d 1010 (Kan. App. 1994).
- Kentucky **Upheld under Federal Constitution.** *Kinslow v. Commonwealth*, 660 S.W.2d. 677 (Ky. 1984), cert. den. 465 U.W. 1105 (1984). Avoiding a checkpoint is sufficient to justify a stop. *Steinbeck v. Commonwealth*, 862 S.W.2d 912 (Ky. App. 1993).

Louisiana	Upheld under State Constitution. <i>State v. Jackson</i> , 764 So.2d 64 (La. 2000), overruling <i>State v. Church</i> , 538 So.2d 993 (La. 1989). See also <i>State v. Parms</i> , 523 So.2d 677 (La. 1988).
Maine	Upheld under Federal Constitution. <i>State v. Leighton</i> , 551 A.2d 116 (Me. 1988); <i>State v. McMahon</i> , 557 A.2d 1324 (Me. 1989); <i>State v. Babcock</i> , 559 A.2d 337 (Me. 1989). Avoiding a checkpoint is grounds for an investigative stop. <i>State v. D'Angelo</i> , 605 A.2d 68 (Me. 1992).
Maryland	Upheld under State and Federal Constitution. <i>Little v. State</i> , 479 A.2d 903 (Md. 1984).
Massachusetts	Upheld under State and Federal Constitution. <i>Commonwealth v. Shields</i> , 521 N.E.2d 987 (Mass. 1988); <i>Commonwealth v. Cameron</i> , 545 N.E.2d 619 (Mass. App. Ct. 1989). In <i>Commonwealth v. Anderson</i> , 547 N.E.2d 1134 (Mass. 1989), the court invalidated a checkpoint for failure to follow guidelines. However, checkpoints to find contraband drugs is illegal. <i>Commonwealth v. Rodriguez</i> , 722 N.E.2d 429 (Mass. 2000).
Michigan	Illegal under State Constitution. <i>Sitz v. Mich. Dept. of State Police</i> , 506 N.W.2d 209 (Mich. 1993). This case was remanded to the Michigan Supreme Court for a decision with regard to the Michigan constitution, Const. 1963, Art. 1, Sec. 11, after the U.S. Supreme Court held in <i>Michigan Department of State Police v. Sitz</i> , 496 U.S. 444 (1990), that sobriety checkpoints do not offend the U.S. Constitution.
Minnesota	Illegal under State Constitution. <i>Ascher v. Comm. of Public Safety</i> , 519 N.W.2d 183 (Minn. 1994); <i>Gray v. Comm. of Public Safety</i> , 519 N.W.2d 187 (Minn. 1994). The courts require evidence of an advance in arrest rates before approving checkpoints under the state constitution.
Mississippi	Upheld under Federal Constitution. <i>Miller v. State</i> , 373 So.2d 1004 (Miss. 1979).
Missouri	Upheld under State and Federal Constitution. <i>State v. Welch</i> , 755 S.W.2d 624 (Mo. App. 1988); <i>State v. Payne</i> , 759 S.W.2d 252 (Mo. App. 1988); <i>State v. Damask</i> , 936 S.W.2d 565 (Mo. 1996); <i>State v. Heyer</i> , 692 S.W.2d 401 (Mo. App. 1998). <i>State v. Canton</i> , 775 S.W.2d 352 (Mo. App. 1989), requires written procedures for checkpoints. Checkpoint avoidance justifies investigatory stop. <i>Oughton v. Director of Revenue</i> , 916 S.W.2d 462 (Mo. App. E.D. 1996). Police may use a deceptive “drug checkpoint” to generate suspicious conduct that would amount to “individualized suspicion” thereby allowing for a Terry-type stop by removing it from the purview of <i>Indianapolis v. Edmond</i> (supra). <i>Missouri v. Mack</i> , 2002 Lexis 12 (Mo. 2002).
Montana	Authorized by statute. Checkpoints have been conducted under the authority of a statute permitting safety spot checks. MONT. CODE ANN. 46-5-501 et seq. This section does not specifically refer to sobriety checkpoints.
Nebraska	Upheld under state law. <i>State v. McCleery</i> , 560 N.W.2d 789 (Neb. 1997). Checkpoint avoidance does not justify an investigatory stop.
Nevada	Authorized by statute. NEV. REV. STAT. 484.359 and 484.3591.
New Hampshire	Judicially approved checkpoints authorized by statute. N.H. REV. STAT. ANN. 265:1-a. <i>Opinion of the Justices</i> , 509 A.2d 744 N.H. 1986). <i>State v. Koppel</i> , 499 A.2d 977 (N.H. 1985) held checkpoints not permitted under state constitution unless authorized by a judge. To justify suspicionless stops, the state must show that its objective cannot be met using less intrusive means. The court found no evidence that checkpoints are greater deterrents than

publicized roving patrols.

- New Jersey **Upheld under State and Federal Constitution.** *State v. Mazurek*, 567 A.2d 277 (N.J. Super. A.D. 1989); *State v. DeCamera*, 568 A.2d 86 (N.J. Super. A.D. 1989); *State v. Moskal*, 586 A.2d 845 (N.J. Super. A.D. 1991); *State v. Kirk*, 493 A.2d 1271 (N.J. Super. A.D. 1985). *State v. Barcia*, 549 A.2d 491 (N.J. Super. L. 1988), held a checkpoint can violate the Commerce Clause of the U.S. Constitution if it impedes interstate commerce. A DUI arrest may result from a vehicle inspection check under *State v. Kadelak*, 655 A.2d 461 (N.J. Super. A.D. 1995).
- New Mexico **Upheld under State and Federal Constitution.** *City of Las Cruces v. Betancourt*, 735 P.2d 1161 (N.M. App. 1987); *State v. Bates*, 902 P.2d 1060 (N.M. App. 1995); *State v. Madalena*, 908 P.2d 756 (N.M. App. 1995).
- New York **Upheld under Federal Constitution.** *People v. Scott*, 473 N.E.2d 1 (N.Y. 1984). Turning into a parking lot to evade a checkpoint is cause for an investigatory stop. *People v. Chaffee*, 590 N.Y.S.2d 625 (A.D. 4 Dist. 1992); but turning off a highway before reaching a checkpoint on to another road is not cause for a stop. *People v. Rocket*, 594 N.Y.S.2d 568 (Just. Ct. 1992). New York does not require written guidelines for a checkpoint. *People v. Collura*, 610 N.Y.S.2d (N.Y. CityCrim. Ct. 1994).
- North Carolina **Authorized by statute.** N.C. Gen. Stat. 20-16.3A. *State v. Barnes*, 472 S.E.2d 784 (N.C. App. 1996). *State v. Johnson*, 446 S.E.2d 135 (N.C. App. 1994) held entering a parking lot to avoid a checkpoint justified a stop. In *State v. Foremen*, 527 S.E.2d 921 (N.C. 2000), the Court held that is it reasonable and permissible for an officer to monitor a checkpoint's entrance for vehicles whose drivers may be attempting to avoid the checkpoint, and an officer, in conjunction with the totality of the circumstances or the checkpoint plan, may pursue and stop a vehicle which has turned away from a checkpoint within its perimeters for reasonable inquiry to determine why the vehicle turned away.
- North Dakota **Upheld under State and Federal Constitution.** *City of Bismark v. Uhden*, 513 N.W.2d 373 (N.D. 1994). See also *State v. Wetzel*, 456 N.W.2d 115 (N.D. 1990) which upholds safety inspection checkpoints and *State v. Everson*, 474 N.W.2d 695 (N.D. 1991) that upholds checkpoints to investigate drug trafficking.
- Ohio **Upheld under State and Federal Constitution.** *State v. Bauer*, 651 N.E. 2d 46 (Ohio App. 10 Dist. 1994) See also *State v. Goines*, 474 N.E.2d 1219 (Ohio App. 1984).
- Oklahoma **Upheld under State and Federal Constitution.** *Geopfert v. State Ex Re. DPS*, 884 P.2d 1218 (Okla. App. 1994).
- Oregon **Illegal under State Constitution.** *State v. Boyanovsky* 743 P.2d 711 (Or. 1987); *Nelson v. Lane Co.*, 743 P.2d 692 (Or. 1987), required legislative approval of checkpoints.
- Pennsylvania **Upheld under State and Federal Constitution.** *Commonwealth v. Yastrop*, 768 A.2d 318 (Pa. 2001); *Commonwealth v. Blouse*, 611 A.2d 1177 (Pa. 1992); *Commonwealth v. Tarbert*, 535 A.2d 1035 (Pa. 1987); *Commonwealth v. Fioretti*, 538 A.2d 570 (Pa. Super. 1988); *Commonwealth v. Myrtetus*, 580 A.2d 42 (Pa. Super. 1990). Under *Commonwealth v. Pacek*, 691 A.2d 466 (Pa. Super. 1997), a checkpoint does not have to provide a legal means of avoidance. Checkpoint must be located in area where DUI is prevalent. *Commonwealth v. Blee*, 695 A.2d 802 (Pa. Super. 1997). Legal U-turn in advance of checkpoint does not justify a stop. *Commonwealth v. Scavello*, 703 A.2d 36 (PA. Super. 1997). A checkpoint conducted at a toll booth was held illegal because it was not conducted in accordance with state

	supreme court guidelines. <i>Commonwealth v. Yashinski</i> , 723 A.2d 104 (Pa. Super. 1988).
Rhode Island	Illegal under State Constitution. <i>Primental v. Rhode Island</i> , 561 A.2d 1348 (R.I. 1989).
South Carolina	No state authority. Checkpoints are conducted.
South Dakota	Upheld under State and Federal Constitution. In <i>State v. Claussen</i> , 522 N.W.2d 196 (S.C. 1994), checkpoint was upheld to find underage drinkers where roadblock was conducted close to a party. Avoidance of checkpoint justifies a stop. <i>State v. Thill</i> , 474 N.W.2d 86 (S.D. 1991).
Tennessee	Upheld under State and Federal Constitution. <i>State v. Downey</i> , 945 S.W.2d 102 (Tenn. 1997) held that properly conducted sobriety checkpoints do not violate the state constitution, but that the checkpoint at issue was not properly conducted because officer discretion was not limited. See also <i>State v. Manuel</i> , 1988 WL 123988 (Tenn. Crim. App. 1988) Checkpoint avoidance may justify investigatory stop but a legal U-turn does not necessarily justify a stop. <i>State v. Binion</i> , 900 S.W. 2d 702 (Tenn. Crim. App. 1994). Combining DWI and drug interdiction checkpoints may be illegal under both the State and Federal Constitution. <i>U.S. v. Huguenin</i> , 154 F.3d 547 (6th Cir. 1998) and <i>State v. Walker</i> , 1998 WL 608220, (Tenn. Crim. App. 1998).
Texas	Illegal under Texas' interpretation of Federal Constitution. <i>State v. Holt</i> , 887 S.W. 2d 16 (Tex. Cr. App. 1994) Because the checkpoint the U.S. Supreme Court upheld in <i>Michigan v. Sitz</i> , 496 U.S. 444 (1990), was legislatively authorized, the Texas court held that absent such authorization a checkpoint is illegal under the U.S. Constitution. There is no specific language in <i>Sitz</i> requiring such an interpretation.
Utah	Authorized by statute. UTAH CODE ANN. 77-23-101 et seq. This statute requires approval of a magistrate. See <i>State v. Sims</i> , 808 P.2d 141 (Utah App. 1991). Avoidance of a checkpoint does not justify a stop. <i>State v. Talbot</i> , 792 P.2d. 489 (Utah App. 1990). For a case holding that a checkpoint can provide too much discretion to police, see <i>State v. DeBooy</i> , 996 P.2d 546 (Utah 2000).
Vermont	Upheld under State and Federal Constitution. <i>State v. Martin</i> , 496 A.2d 442 (Vt. 1985) and <i>State v. Record</i> , 548 A.2d 422 (Vt. 1988).
Virginia	Upheld under State and Federal Constitution. <i>Lowe v. Commonwealth</i> , 337 S.E.2d 273 (Va. 1985), cert. den., 475 U.S. 1084 (1986). See also, <i>Crandol v. City of Newport News</i> , 386 S.E.2d 113 (Va. 1989); <i>Simmons v. Commonwealth</i> , 380 S.E.2d 656 (Va. 1989); <i>Hall v. Commonwealth</i> , 406 S.E.2d 674 (Va. App. 1991); <i>Thomas v. Commonwealth</i> , 473 S.E.2d 87 (Va. App. 1996). Deviation in checkpoint location, as stated in plan, will not invalidate the checkpoint. <i>Sheppard v. Commonwealth</i> , 489 S.E.2d 714 (Va. App. 1997). Legal driving maneuvers that reverse a driver's course toward a checkpoint do not justify a stop, <i>Bass v. Commonwealth</i> , 525 S.E.2d 921 (Va. 2000). See also, <i>Murphy v. Commonwealth</i> , 384 S.E. 2d 125 (Va. App. 1989). Certain avoidance maneuvers do justify a stop, <i>Commonwealth v. Eaves</i> , 408 S.E. 2d 925 (Va. App. 1991); <i>Stroud v. Commonwealth</i> , 370 S.E. 2d 721 (Va. App. 1988); <i>Brown, V. Commonwealth</i> , 440 S.E. 2d 619 (Va. App. 1994).
Washington	Illegal under State constitution. <i>City of Seattle v. Mesiani</i> , 755 P.2d 775 (Wa. 1988), required legislative authority for checkpoints.
West Virginia	Upheld under State and Federal Constitution. <i>Carte v. Cline</i> , 460 S.E.2d 48 (W.Va. 1995). A preconceived plan using nondiscriminatory procedures must be used, <i>State v. Frisby</i> , 245 S.E.2d 622 (W.Va. 1978) (cert. den. 439 U.S. 1127 1979). See also, <i>State v. Davis</i> , 464 S.E.2d

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598 (W.Va. 1975)

Wisconsin

Prohibited by statute. WIS. STAT. ANN. 349.02(2)(a).

Wyoming

Prohibited by interpretation of the roadblock statute. WYO. STAT. ANN. 7-17-101 et seq.