



# DPS Legal Review

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## CONSTITUTIONAL STOP INCIDENT TO AN ARREST

After an officer pulled the defendant over because of excessively loud music, the officer saw the defendant reach toward the center of the vehicle as if trying to conceal something. This movement made the officer suspicious, so he called for back-up.

The officer approached the defendant's vehicle and explained the reason for the stop. While the officer was talking to the defendant, he noticed open containers of alcohol near the feet of the vehicle's passenger. Asked if he had been drinking in the car, the passenger admitted that both he and the driver had been drinking. The officer took the driver's license and registration, and, as he was walking back to his vehicle to check it, he noticed that the defendant was making suspicious movements and appeared to be trying to stuff something under the seat.

When a second officer arrived at the scene, he approached the vehicle, and he observed the defendant reaching into the back seat. The second officer saw the defendant clenching a shiny plastic object in his fist. When questioned about what was in his hand, the defendant denied having anything. The second officer grabbed the defendant's hand, and, after a brief struggle, the officer pried from his hand baggies of crack cocaine. The defendant's vehicle was searched and a pouch was found which contained crack cocaine, baggies, and a scale.

**HOLDING:** The defendant driver was accused of possession of cocaine with intent to distribute. He moved to suppress the evidence. The Court held that probable cause existed for the traffic stop since there was ample evidence in the record that the defendant's music was excessively loud. The first officer's alleged subjective intent for the stop was irrelevant. Under the facts, reasonable suspicion existed to warrant the second officer's seizure of the drugs from the defendant's hand. Thus, the drugs and drug paraphernalia found in his vehicle

were not subject to suppression. U.S. v. Cullars, 2007 WL 41953 (S.D.Ga. Jan. 3, 2007).

## CONSTITUTIONAL STOP INCIDENT TO A WARNING CITATION

The defendant driver and his passenger were indicted for trafficking in cocaine based on evidence seized when the police conducted a traffic stop. Both defendants moved to suppress the evidence, alleging violation of their Fourth Amendment rights to be free from unreasonable search and seizure. The officer stopped the vehicle because of a license plate violation.

Because of the violation, the officer checked the driver's license and proof of insurance, and he explained to the driver why he stopped him. The officer walked to the rear of the vehicle to show the driver the problems with the license plate. During the process, the officer became suspicious that there might be contraband because he noticed the driver and his passenger acted nervous and avoided eye contact. The officer told the driver that he planned to issue a warning citation, and, as he was writing the citation, he asked the driver if there was any contraband in the vehicle. The driver said there was no contraband. The officer gave him the warning citation and asked if he would consent to a search of his vehicle. The driver consented.

The driver then approached the passenger, who was still sitting in the front of the vehicle, and told him to put on his coat. The officer asked the passenger to exit the vehicle and told him that the driver had given consent for a search of the vehicle. The passenger exited the vehicle, turned from the officer, and reached into one of his pockets. Based upon the passenger's movements, the officer became concerned that he might be armed. He asked the passenger for consent to search his pockets. During a pat down search, he found a kilo of cocaine in the passenger's pocket.

**HOLDING:** The officer's observations gave him probable cause to stop the vehicle. The court held that the passenger voluntarily consented to the search. The officer's questioning did not prolong the stop beyond the time reasonably required for the purpose of the stop. Although the consent to search was granted at the conclusion of the traffic stop, the Court declined to accept the argument that a request for consent to search, in and of itself, constitutes a continued detention and questioning.

Likewise, the driver voluntarily consented to a search of his vehicle based upon the totality of the circumstances. That consent provided the officer with a valid reason to ask the passenger to get out of the vehicle so that it could be searched. Additionally, the mere presence of multiple police officers at the stop was not evidence of coercion. State v. Davis, 2007 WL 29458 (Ga. App. Jan. 5, 2007).

### GEORGIA'S LEGISLATIVE PROCESS

The following is a general outline of how a proposed bill becomes law:

1. When a legislator concludes that there is a need for a new law or change to existing law, he goes to the Office of Legislative Counsel where an attorney provides legal advice and drafts a bill.
2. The legislator then files the bill with the Clerk of the House or with the Secretary of the Senate.
3. On legislative day, the bill is formally introduced, and the bill's title is read during a period of first readings and immediately assigned to a standing committee.
4. In the House, on the next legislative day, the Clerk reads the bill's title (second reading) in chamber. In the Senate, the second reading comes after the bill is reported favorably from committee.
5. The bill is considered by committee. The committee can add amendments or rewrite the bill. Bills may be reported out favorably or unfavorably, *but* most die in committee.
6. The Clerk or Secretary prepares a daily general calendar of bills favorably reported from committee. For the first five days of the session (only in the Senate), the presiding officer calls up bills from this calendar for floor action.
7. Throughout the session for the House and during the last 35 days in the Senate, the

Rules Committee selects bills from the general calendar and prepares a daily rules calendar listing measures eligible for floor consideration. 8. After the presiding officer calls up the bill from the rules calendar for a third reading, it is ready for floor debate, amendment, and voting. After debate, the main question is called, and the members vote.

9. Once a bill is approved by both houses, it is enrolled and sent to the governor (if requested). Otherwise, all enrolled bills are sent to the governor following adjournment *sine die*.<sup>1</sup>

10. The governor has 40 days after adjournment to sign the bill, do nothing (in which case the bill becomes law), or veto the bill. The governor's veto can be overridden by two-thirds vote of each house.

11.

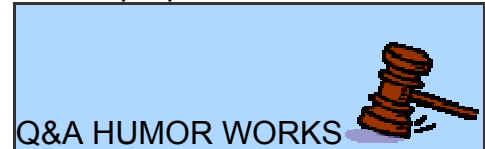
<http://www.cviog.uga.edu/Projects/gainfo/pdf>.

The General Assembly's website is

<http://www.legis.ga.gov>.

### ALS REMINDER

Remember that a roadblock must be implemented for a legitimate primary purpose and the purpose must be testified to in court. Legitimate purposes include checking drivers' licenses, insurance, seatbelts and checking for impaired drivers. A roadblock set up for general law enforcement purposes is not valid.



Q: When will you see a pole with a worm at both ends?

A: When you go fishing with a lawyer.

Q: What do you call a dozen sky-diving lawyers?

A: Skeet.

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<sup>1</sup> *Sine die* is a Latin term that means with no day being assigned (as for resumption of a meeting or hearing).