

# HOW TO RESPOND TO A COP IN A TRAFFIC PULLOVER

## KNOW YOUR RIGHTS

You Won't Find This **4-1-1** Anywhere Else  
Top Questions to Establish & Take Back Your Liberty  
but more importantly, the answers to give back.

## **Top Questions to Ask Public Servants *before allowing them to proceed foreword* AND Most importantly..HOW TO RESPOND!**

My people are destroyed for lack of knowledge...

We did not compile these questions and in fact that is not what you donated to. Your donation was for everything but the questions. Your victory will come in your strength. Your strength will come in your knowledge. Knowledge is your best defense.

Unfortunately getting pulled over happens to most all of us. In fact the numbers have increased drastically. There are a few things you must learn and you will find that once you do, things will more often than not turn out in your favor.

Remember you are not 'driving' anywhere but instead you are 'traveling'. Time and time again the Supreme Court has upheld your God given right to travel. When you are pulled over the cops are 'impeding upon your right to travel'. If you have not injured someone or committed a felony and they don't have sworn testimony from an eyewitness then they cannot pull you over and are violating your Bill of Rights. Rights violations are each \$250K fines-meaning you sue them via a Title 42 Action Lawsuit. Generally when they violate 1 they've violated 3 to 4, meaning every Title 42 lawsuit is for \$750k-\$1Million on average. The average cost to the other side to litigate through a trial is approximately \$250K. The retainer alone to start will be \$10k-\$30k just for starters. If the offenses were pretty bad, it will be much higher.

***NEVER say you are operating a 'vehicle'. You can however speak in terms of my car, my conveyance or automobile.***

## **DISCLAIMER**

**42Action.ORG is NOT a law firm and cannot provide legal advice but we can guide you thru legal self-help or direct you to others who can provide free consultations. We do not advocate speeding or driving dangerously to 'test' the system. While speed limit signs are not law but merely 'recommended' speeds, they are generally the safest speeds for the locations.**

So let's get started.

You are traveling and you see a cop put his lights on behind you. You do not want to run the risk of your car being towed, so put on your flashers and slow down. Waive in your rear view mirror and let him know you saw him. Two things are happening here. You're automobile can ONLY be towed if they are seizing it for evidence or it's obstructing traffic, so you are avoiding that. 2nd...you are also making it so they cannot say you tried to evade. The dash cam will be evidence of that. They can alter their cameras but they cannot alter yours so make sure you have yours out and are recording. It's your 1st

Amendment Right. If they are in a public place and on official duty you can record them- if they say otherwise they are lying.

Whether walking or driving they will question you, you should not just roll over and answer. Flip it around on them and ask what the purpose of the interrogation is for. They will ask for 3 forms of id, license, registration and proof of insurance. You can immediately go into questioning him. Is there a law that states I must have that? IF he answers yes there is a law, they are intentionally and knowingly misstating a law. When anyone in their official capacity lies, it is an abuse of their official capacity, it is official oppression and official misconduct and they can be prosecuted for felony acts. The level of the offense is often times based on the value of all the equipment he's used to commit the crime. In some locations if the value is over \$1500, then it becomes a state felony punishable by jail. Cruisers, laptops, tasers, guns, etc., all take the value up.

1<sup>st</sup> rule...You must always be obtaining evidence.

The ONLY lawful reasons anyone in law enforcement can pull you over are; you have committed a felony or are about to. In order to prove this they must have a competent first hand material fact witness. 2<sup>nd</sup>-that you have injured someone. Thats it! Speeding-no, taillights out-no, out of date tags-no. No No No.

### **Remember this...**

1) No Victim -No Complaint or witness -No Crime -no lawful grounds for arrest-not

- even a ticket
- 2) No Felony or proof of one about to be committed – No lawful warrant – no lawful grounds for arrest-not even a ticket!
  - 3) The less you say the better, you be the one who asks the questions-they are under your authority not the other way around.

All people of the earth have God given rights that existed long antecedent to the formation of any government. In our Constitution, these Rights are delineated in our Constitution specific to the Bill of Rights. We, the people created the government and therefore have created requirements of performance which are included in the questions below.

## **Top Questions to Ask Public Servants *before allowing them to proceed foreword* AND Most importantly..HOW TO RESPOND!**

Initial contact when he comes to your vehicle ...Where's the emergency sir and how can I help (this is always a fun one)?

You can take the time to be concerned or just get right into it. If you are going to get right into it, you can say something to this affect.... (keep in mind he's just asked for your i.d.)

**Before we can continue, I need to ask you some questions too so let's start with me OR I need you to answer a few questions for me first:**

- 1. What is your official job title? (They will say "Well I'm Officer/Sheriff/Trooper so and so") Don't be afraid to ask them for their ID. After all anyone can go online and get a cop uniform and badge and some have,**

its known as “impersonating an officer”.

**2. Are you in your official capacity at this moment? (The answer will either be...”Yes” OR “Well I’m in my uniform aren’t I?” You can reply with, “Wow-so you mean if I buy a uniform and a badge, I can be a cop too?” Your response shows just how silly the answer is that he just gave you. You are establishing that they are indeed on duty and *Serving We The People* like their Oath of Office states) . IF they answer yes, this also puts them on the hook, for all their actions.**

**3. Do you have a certified copy of your Oath of Office as required pursuant to the Florida State Constitution Article 2 section 5 and Florida Statutes 570.11 which I may scrutinize? (Insert your own state) A doctor cannot practice medicine without showing his license and an officer cannot either-believe it or not most times they do NOT have their Oath-in fact most cannot even recite even 1 of the first ten Amendments. One county in Hawaii-had not had a judge take the Oath in 80 years!!! This means every case should be overturned and thrown out and the judges should be in prison)**

**4. Do you have a good faith surety bond or any bond required of you to ensure your faithful performance of your duties, which I may scrutinize? (A surety bond of good faith in case the Oath has been perjured by any of their actions. Kind of like an insurance policy if and more likely -when they mess up)**

**5. Are you required to uphold my 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup>, and 14<sup>th</sup> amendment protections as required by the united States Constitution, clearly established law, and your sworn Oath of Office? (If the answer is yes then he’ll know he’s in violation and should let you be on your way immediately. If the answer is NO-then his Sworn Oath meant nothing and he’s in violation –Title 42 Action Lawsuit-on it’s way baby! )**

**6. Has someone accused me of committing a crime? (Answer will always be no, unless you really did. You are stating the obvious, no victim no crime. Ask then are you detaining me or am I free to go?**

**7. Is there a sworn affidavit submitted on file from anyone alleging that I have caused them any injury? (This must exist-remember no victim no crime. If no sworn affidavit-no crime, he must let you go.)**

**8. Is there any constitutionally compliant warrant or summons issued that**

requires me to be here? (If not holding you there is a violation of 4<sup>th</sup> Amendment)

9. In this meeting, is anything I say something that, "Can and will be used against me in a court of law?" (If officer answers yes-stop talking! See 5<sup>th</sup> Amendment notes below)

10. What is the purpose of my appearance here? (If they ask you if you know what you were pulled over for always answer NO-you cannot be compelled to be a witness against yourself-see notes for 6<sup>th</sup> Amendment below. Also the definition of 14<sup>th</sup> Amendment...nor shall any state deprive any person life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.) One of the reasons they actually ask you..maybe they clocked you at 55mph, but you say you were going 65, well then they have you making an admission on audio/video. You just made their job real easy on them.

11. Am I required or compelled by any law to answer any questions that you ask? (If they say yes-ask them to cite you the law. Also point out that whatever they do cite you is a violation to your 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup> and 14<sup>th</sup> Amendments and if they proceed down this route you will be filing a Title 42 Action Lawsuit against them in their official capacity (on the job) and unofficial capacity (personally)-this is in addition to the department.

*We, the People, have a reasonable expectation that, these workers, pursuant to these oaths are not going to violate those rights, but simply abide by their oaths in the performance of their official duties.*

*Also remember IF they still write you a ticket for speeding or taillight out etc., this is NOT a criminal offense. Beware IF they pull you into criminal court for this.*

*IF you were unwilling to show your I.D. and they arrest you, if they TAKE your wallet to get your I.D., that is a 'wrongful grab'. If they happen to see it but you didn't give it to them, that is*

***still not considered I.D. They NEED you to give it to them, to hold you on a warrant or anything. We personally don't sign our name or give our name for anything because we don't want them to get 'jurisdiction' over us. No matter how bad the pressure and how terrible they say you are, if you don't ever give your I.D. over they can NEVER get jurisdiction over you and will eventually let you go. IF they jailed you over this, if you can take it for a few days, don't worry, they will have to let you go. Unlawful detainment fines are a minimum \$50 K per day. IF they unlawfully detained you, then you are set for a Title 42 and 18 Action lawsuit.***

### *1<sup>st</sup> Amendment*

*Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.*

### *2<sup>nd</sup> Amendment*

*A well regulated Militia, being necessary to the security of a free state, the RIGHT of the people to keep and bear arms, Shall not be infringed.*

### *3<sup>rd</sup> Amendment*

**No soldier shall, in time of peace be quartered in**

any house, without the consent of the owner, nor in time of war, but in a manner to be prescribed by law.

#### **4<sup>th</sup> Amendment**

*The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.*

#### **5<sup>th</sup> Amendment**

*No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be*

*compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.*

### *6<sup>th</sup> Amendment*

*In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.*

### *7<sup>th</sup> Amendment*

*In suits at common law, where the value in controversy shall exceed twenty dollars, the right of*



*trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise reexamined in any court of the United States, than according to the rules of the common law.*

### ***8<sup>th</sup> Amendment***

**Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.**

### ***9<sup>th</sup> Amendment***

**The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.**

### ***14<sup>th</sup> Amendment***

*All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens*

*of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.* (Only section one applies to the states.)

*Let's break those down to help you understand*

✓ 1) **First Amendment** – involves speech, freedom of the press, association or religion. For example you have a guaranteed right to record police activity. However, the 1<sup>st</sup> Amendment doesn't

protect speech that directly provokes people to violence. Hate speech and defamation is not protected. Political controversy IS protected.

If they violate this, there is irreparable injury. As ruled by the Supreme Court-it cannot be repaired.

✓ 2) **Second Amendment** – involves the right to keep and bear arms. Gun laws violate our 2<sup>nd</sup> Amendment, thus the words 'shall not be infringed'. See McDonald v City of Chicago.

✓ 3) **Third Amendment** – prohibits quartering of soldiers in time of peace or war. 2ndly if a soldier comes to your house and kicks you out-there is no due process, which is a total violation. This is happening in our country today. In times of war-meaning you should be safe if 'martial law' is called.

✓ 4) **Fourth Amendment** – The Fourth Amendment

requires that a search warrant describe the things to be seized with sufficient particularity to prevent a general exploratory rummaging in a person's belongings. Citing *Coolidge v. New Hampshire*. 403 U.S. 443, 467 (1971). The 4<sup>th</sup> Amendment prohibits unreasonable searches and seizures. Do the officers involved have sworn statements? IF no sworn Oath or Affirmation, the officer can go to prison for no less than 2 years. This Amendment is incorporated in its entirety. IF they touch you-that IS battery, even a poke or a prod. Automobile stops ARE A SEIZURE, whether voluntarily OR involuntarily (ie Road block etc.) The question is "Was it reasonable?" To make it legal there MUST be suspicion of illegal activity! If you ask am I free to go and they say no, you can show in court that you were seized. They cannot just hold you even though they'd like you to believe you are not free to go.

Example of your effects ie; cell phone, car, wallet etc.

1. General affidavits allow them to search everywhere and take everything...however... they must have good enough facts-otherwise it is UNLAWFUL. IF a Constitutional Right is violated and evidence was obtained and they were looking for something specific and found something else, that is NOT admissible. IF affidavit wasn't correctly done then it is UNREASONABLE. 4<sup>th</sup> Amendment violations are the cause of your injury and the foundation of the Title 42 Action lawsuit.

✓ **5)Fifth Amendment**—protects against “takings” without just compensation provides (federal) equal protection and against self-incrimination. Take the 5<sup>th</sup>. Keep your mouth shut! You do NOT have to answer any questions verbally, specifically with the federal gov't UNLESS they give you immunity first. The Supreme Court says, if you

believe it could incriminate yourself, then you do not have to answer. You cannot be compelled to be a witness against yourself (Miranda vs AZ). IF 'they' tell you must tell them your name, that is not true. You must be allowed to face your accuser. For an indictment there must be a 1<sup>st</sup> and material fact witness who is

willing to testify. If all they have is an affidavit that is NOT enough.

^ 6) **Sixth Amendment** - in all "criminal or civil" proceedings right to a speedy and public trial, trial by impartial jury, notice of accusations, confronting adverse witnesses, right to compulsory process and right to assistance of counsel-they do NOT have to be an attorney.

^ 7) **Seventh Amendment** – in suits at common law no fact tried by a jury shall be other wise reexamined by any court except by the rules of the common law.

^ 8) **Eighth Amendment** – "Cruel and Unusual Punishment" – Applies to convicted prisoners. Meaning if you are only in jail awaiting bail, they can't starve you or wake you up all night. The bail cannot be beyond the means of what a common man can pay. Jail is ONLY supposed to be a place of containment NOT punishment.

^ 9) **Ninth Amendment** Our mere existence shows we have these rights! We have more rights than we can even count.

^ 10) **Fourteenth Amendment**–This does NOT make a citizen of you. **A mark for the beginning of the**

**selective incorporation doctrine.**

*"It is possible that some of the personal rights safeguarded by the first eight Amendments against National action may also be safeguarded against state action, because a denial of them would be a denial of due process of law. If this is so, it is not because those rights are enumerated in the first eight Amendments, but because they are of such a nature that they are included in the conception of due process of law."* -Justice Moody  
*Twining v. New Jersey*, 211 U.S. 78 (1908)

✓ **Overtaken in** (protection against self incrimination 5<sup>th</sup> amendment) *Malloy v. Hogan*, 378 U.S. 1 (1964) "Equal Protection Clause" –protects against race and gender discrimination. The Due Process Clause requires an appropriate form of a hearing before or after a party's rights or property rights are taken. In some cases, a duty to protect has been recognized under the due process clause.

*Helpful sites to do some of your own research*

Scholar.google.com

Lexusnexus.com

Law.cornell.edu

Westlaw.com

## **Other Helpful Search Terms**

Legal Resources

State Law Resources

Pick state--->then statutes--->transportation (as an example)--->Speeding (Nevada 28-701)

Case law is decisions by judges that are published.

## **Remember...**

Just because it's not in the statutes doesn't mean it's not law -if it's Constitutional you are protected. Laws that violate the Constitution are void on their face.

IF they persist in writing you a ticket and they threaten imprisonment if you do not sign it, that

is like holding a gun to your head and saying sign here or else. That is illegal and unlawful. At that point go ahead and sign their ticket. Unless you have time to sit a minimum one night in jail or several days, which this will make your lawsuit greater but will change your plans for the next few days. If signing...do this...where it says your name-sign there but add to it. UNDER DURESS (UNDER your name) by "Your Name A.R.R. without prejudice" OR "by Your Name All Rights Reserved without prejudice" (Next to your signature)

Without prejudice means without abandonment of a claim, privilege, or right, and without implying an admission of liability. When you do not want to be "presumed" to be waiving rights or acquiescing to de facto statutes, you should sign all documents, "without prejudice," beside your signature, like it's just a continuation of your name.

You do have another option. If you don't want to sign it, the cop must take you before a magistrate within a short time frame. The cop does NOT have the authority to incarcerate you;

ONLY a judge can do that. They almost NEVER are willing to waste their time as theirs a high potential of it being thrown out right then. The reason they have nothing that can be charged against you in a court of law. No crime no victim. Motion to dismiss!

## **Supreme Law Cases**

### **U.S. Supreme Court**

#### **Delaware v. Prouse, 440 U.S. 648 (1979)**

2. Except where there is at least articulable and reasonable suspicion that a motorist is unlicensed or that an automobile is not registered, or that either the vehicle or an occupant is otherwise subject to seizure for violation of law, stopping an automobile and detaining the driver in order to check his driver's license and the registration of the automobile are unreasonable under the Fourth Amendment. Pp. [440 U. S. 653-663](#).

(a) Stopping an automobile and detaining its occupants constitute a "seizure" within the meaning of the Fourth and Fourteenth Amendments, even though the purpose of the stop is limited and the resulting detention quite brief. The permissibility of a particular law enforcement practice is judged by balancing its intrusion on the individual's Fourth Amendment interests against its promotion of legitimate governmental interests. Pp. [440 U. S. 653-655](#).

### **U.S. Supreme Court**

#### **Brown v. Texas, 443 U.S. 47 (1979)**

The application of the Texas statute to detain appellant and require him to identify himself violated the Fourth Amendment because the officers lacked any reasonable suspicion to believe that appellant was engaged or had engaged in criminal conduct. Detaining appellant to



require him to identify himself constituted a seizure of his person subject to the requirement of the Fourth Amendment that the seizure be "reasonable." *Cf. Terry v. Ohio*, 392 U. S. 1; *United States v. Brignoni-Ponce*, 422 U. S. 873. The Fourth Amendment requires that such a seizure be based on specific, objective facts indicating that society's legitimate interests require such action, or that the seizure be carried out pursuant to a plan embodying explicit, neutral limitations on the conduct of individual officers. *Delaware v. Prouse*, 440 U. S. 648.

## **U.S. Supreme Court**

### **Terry v. US, 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968)**

*Terry v. Ohio*, supra, reaffirmed the settled principles that "a search which is reasonable at its inception may violate the Fourth Amendment by virtue of its intolerable intensity and scope" and that the "scope of the search must be 'strictly tied to and justified by' the circumstances which rendered its initiation permissible." (392 U.S. at pp. 17-19 [20 L.Ed.2d at pp 903-404].)

#### People of Colorado v Nothaus

[1] Article II, Section 3 of the constitution provides that: "All persons have certain natural, essential and inalienable rights, among which may be reckoned the right \* \* \* of acquiring, possessing and protecting property; \* \* \*" A motor vehicle is property and a person cannot be deprived of property without due process of law. The term property, within the meaning of the due process clause, includes the right to make full use of the property, which one has the inalienable right to acquire.

[2-3] Every citizen has an inalienable right to make use of the public highways of the state; every citizen has full freedom to travel from place to place in the enjoyment of life and liberty. The limitations, which may be placed upon this inherent right of the citizen, must be

based upon a proper exercise of the police power of the state in the protection of the public health, safety and welfare. Any unreasonable restraint upon the freedom of the individual to make use of the public highways cannot be sustained. Regulations imposed upon the right of the citizen to make use of the public highways must have a fair relationship to the protection of the public safety in order to be valid.

The constitutional right of interstate travel was fully recognized long before adoption of the Fourteenth Amendment. See the statement of Chief Justice Taney in the Passenger Cases, 7 How. 283, 492:

For all the great purposes for which the Federal government was formed, we are one people, with one common country. We are all citizens of the United States, and, as members of the same community, must have the right to pass and repass through every part of it without interruption, as freely as in our own States.

If ticketed-you can notify the court that you are not going to appear-when they ask why you say 'refusal for cause'.

\*Warrants die after 6 months (bench warrants)

Also there is no such thing as an 'electronic 4<sup>th</sup> Amendment warrant.

If Warrant is old- you can file a motion to dismiss because of failure to prosecute.

**PLEASE NOTICE that NO constitution ever provided THE PEOPLE with Rights that They did not already possess prior to creation of such Instrument.**

**THE PEOPLE physically exist as Human Life Forms, clearly establishes Their Rights to Live, Their Self-Rights of TITLE-TO-SELF, and Their Rights to defend Their Lives which began, existed, and successfully operated through Their individual Genetic Lineages and Heritages, wherein all such Rights have existed long antecedent to the formation of any constitution; consequently, THE PEOPLE are required to make NO CLAIMS for any so-called "rights" that might have been accidently enumerated or stipulated to in the Text(s) of any such Instrument**

Three types of Title 42 Complaints: Determined by complexity of the case including number of defendants, number of causes of action, complexity of the matter, etc.

- A. **Administrative – less than 6 months to resolve**
- B. **Standard – 6- 12 months to resolve**
- C. **Complex – 12-36 months to resolve**

**\*\*\*IF you are indeed pulled over and your Rights are violated, you should file a Title 42 Action Lawsuit against all the parties involved. This does take some homework on your behalf but then is \$1 Million worth it to you? We can help walk you through the paperwork and footwork but we cannot show up in court for you. We can help arm you to represent yourself. You do not need a lawyer to do this on your own. In fact how many actual lawyers are really going to sue their own kind? People all over the country are doing this every day. They are winning, because the Supreme Law is the Constitution and nothing can usurp the Supreme Law of the Land, not even a new statute or a new code, that's trickery 'they' use on the uneducated. The fees involved in a Title 42 are notary fees, postage, filing fees at the clerk, and a donation to whoever guides you thru the self-help information. This will be way less than hiring a lawyer to misrepresent you.**

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**Educational lawful documents—right at your fingertips  
Step-by-step instructions make it easy**

We the people using the Private Attorney General Act (P.A.G.) as authorizes by the 39th Congress now come before our elected Legislators to "Set Forth" Constitutional Contempt and Violates of Congressional Act before your offices to have them heard, as there is No other party who can bring such a claim. **Meaning we can walk in the courts and represent one another without being a B.A.R. Member and if they deny that they are in the violation of the Taft Hartley Act - overthrow of government and a close union shop.**

**Not sure what you need? Go to [www.42Action.org](http://www.42Action.org)**

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**Travel is a right, and is included within the "Liberty" mentioned in the Constitution. It is so fundamental a right as to not require any discussion. Interstate travel is consistent with the concept of a federal union. The Citizens of this country are free to pass and re-pass through any part of it. The Supreme Court said that. "The Constitution also says that no state can impair the obligation of a contract? Have you obligated yourself by contract?" I agree to obey all the traffic regulations or be subject to fines and penalties." Is that a contract?**

**What if there is no contract (or at least not an enforceable one)? What would be the cause of action?  
The nature of the claim?**

**If there is no (enforceable) contract, and no injured party, who has standing to bring the complaint?**

**Travel on a public easement of passage is a right. Using it for commercial gain is a privilege.**

**Are you in commerce? Do you carry "passengers" (for hire), or "automobile guests?"**

**Do you carry cargo (for hire), or just your own stuff?**

**Do you travel in an automobile, or operate a motor vehicle?**

**Who owns that automobile? Any lien on it? Any security interest?**

**Traveling along a public easement of passage in your automobile with your guest and your own stuff is NOT the same as OPERATING a MOTOR VEHICLE with your PASSENGER and somebody else's CARGO.**

**There's a little more to it than that, but that's it in a nutshell.**

**For a really clear court decision, see Thompson v. Smith, Supreme Court of Virginia, 1930**  
"the right of the citizen to drive on a public street with freedom from police interference ... is a fundamental constitutional right"  
White, 97 Cal.App.3d 141, 158 Cal. Rptr. 562, 566-67 (1979)

See Norton v. Shelby County, 118 US 425 (1886) and Shuttlesworth v. Birmingham, 394 US 497 (1969) (there are at least four Supreme Court cases entitled Shuttlesworth v. Birmingham, so make sure you get the right one).

Bonus\*\*\* Put this in you signature tag of all your emails

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OR use this one...

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## A MOTION TO QUASH

There are a lot of GREAT examples out there on filing a motion to quash...this is one of the best we've found to date. This doesn't have the name of the writer-so we hesitate to state the defendants name as to protect their privacy.

### IN THE DISTRICT COURT STATE OF YOUR STATE

STATE OF YOUR STATEI,

**Plaintiff,**

v.

**QUASH**

)  
)  
)  
)  
)

Case No. 123456789

**DEFENDANT'S MOTION TO**

YOUR NAME,

**Defendant.**

) **BENCH WARRANT WITH**  
) **MEMORANDUM, AFFIDAVIT IN**  
) **SUPPORT, CERTIFICATE OF**  
) **SERVICE AND ORDER**  
)

**DEFENDANT’S MOTION TO QUASH BENCH WARRANT**

Comes now, the Defendant in error, Your Name, a Natural Peron, *Sui Juris*, who respectfully moves this court to Quash the Bench Warrant issued on or about May 3, 2012. Defendant by his choice has and continues to speak for himself in this matter. By granting the issuance of a Bench warrant the court erred by demonstrating an excess of jurisdiction when issuing said bench warrant, as the prosecution has not been initiated as directed by the Hawaii Revised Statutes and the Hawaii Rules of Penal Procedure. Without the lawful initiation of the prosecution in this matter the initiation of jurisdiction of the court remains void ab initio.

**STATEMENT OF THE CASE**

The Defendant was arrested 5/29/2011 and later charged via Complaint for the following: Harassment under HRS § 711-1106(1)(b) (Report No. 11193427), Obedience to Police Officer under HRS § 291C-23 (Report No. 11193465) and Failure to Disperse under HRS §711-1102(2) (Report No. 111934522) on or about the June 4, 2011 specific to an alleged incident of 29<sup>th</sup> day of May 2011, in the City and County of Honolulu State of Hawaii. Along with Your Name, four other defendants were similarly arrested and later charged by complaint.

At no time has this Defendant been served any summons or warrant as directed per HRPP 9a(1-2) in order to obtain the defendant’s appearance.

The Deputy City Prosecutor as complainant filed the original complaint on or about June 2, 2011 and amended the same, which was filed on or about June 28, 2011. Defendant in a special appearance before the court, on or about June 28, 2011 in the District Court of the First Circuit, Honolulu Division, State of Hawaii was served the complaint only and then the amended complaint only. Defendant appeared by special appearance and not generally, as there had been no service of any summons or warrant.

Defendant, even though domiciled on the mainland and not a resident of the state of Hawaii, has traveled over to the state of Hawaii on four (4) occasions and made five (5) special appearances in this matter; on or about June 28, 2011, July 11 and 12, 2011, September 6, 2011, and November 3, 2011. At none of these special appearances has the prosecution been able to demonstrate on the record, despite the requesting so at each appearance, that the prosecution had been initiated per Hawaii Revised Statutes and the Hawaii Rules of Penal Procedure. Without the prosecution being initiated per statute and the rules of procedure, the courts jurisdiction at no time has been initiated which would have thus allowed the court authority to proceed to any arraignment and the offering of a plea to the Defendant.

Defendant, at the 11/3/2011 special appearance at this District Court, was invited by this court to appear for a sixth (6<sup>th</sup>) time, a fifth (5<sup>th</sup>) Arraignment and Plea, scheduled for, on or about, 1/26/2012. Because of financial constraints, Defendant by motion asked the court to continue the matter until, on or about, 2/23/2012 and then to March 26, 2012 which continuances were granted. Defendant had a family medical emergency and was in South Carolina, and filed a third (3<sup>rd</sup>) continuance and asked to continue the matter until, on or about, May 3, 2012. The court denied this request for continuance to May 3,



2012. On or about March 26, 2012, Defendant did file on the court and serve on the Deputy Prosecuting attorney a “Mandatory Judicial Notice of Law” pursuant to Hawaii Rules of Evidence 202 demonstrating that the process used to initiate the prosecution and the jurisdiction of the court was insufficient to do so pursuant to specific Hawaii Revised Statutes and specific Hawaii Rules of Penal Procedure. To date, neither the court nor any representative from the City of Honolulu Prosecuting Attorney’s office have responded to this “Mandatory Judicial Notice of Law”. This demonstrates a tacit agreement with this Notice.

The record in this matter reflects that during the proceeding of March 26, 2012, the court scheduled another arraignment, plea, and trial (APT) for, on or about, May 3, 2012. Defendant determined after the fact that during this May 3, 2012 scheduling, the court granted the issuance of a Bench Warrant. Defendant has not been served any notification that the court scheduled a proceeding for, on or about, May 3, 2012 or any subsequent proceedings.

### **SUMMARY OF ARGUMENT**

Hawaii Revised Statutes and the Hawaii Rules of Penal Procedure (HRPP) outline, in part, the procedures by which a prosecution of a criminal matter is initiated and by which the court’s jurisdiction is initiated. The initiation of any prosecution is statutory and required to be in accordance with the HRPP, but is clearly insufficient in this matter, and, therefore, this court’s jurisdiction has not been at any time and is unable to be initiated; see Hawaii Rules of Penal Procedure (HRPP) 5(b)(1). It should also be noted that at no time has the defendant been granted any probable cause hearing since the arrest without warrant of 5/29/2011.

On or about March 26, 2012, defendant in good faith had filed and served on the parties and the court, a Mandatory Judicial Notice in order to aid the court and opposing counsel of ensuring that the court record in this matter would remain free of error. Despite the established maxim that jurisdiction cannot be procured where non-existed, the prosecution and the court have persisted in their attempts to move forward on a case, which is clearly void ab initio.

Defendant at no time has been served any lawful summons and, since March 26, 2012, has not received any notice to appear for any proceeding in this matter. Despite this void, the court and the prosecutor have persisted in their efforts to prosecute this matter. Since, the initial arrest, the charges and the complaint against the Defendant were unsupported by any sworn statement or affidavit by any competent first hand material fact witness as directed and required pursuant to the direction of HRPP 5(b)(1). The charges through the complaint are, thus, void ab initio and thereby affords no jurisdiction to the Court. Therefore, the complaint as well as all ensuing orders and warrants are without probable cause, without merit, defective on their face, and insufficient as a matter of law, thereby affording no initiation of jurisdiction to any court. *“A court cannot confer jurisdiction where none existed and cannot make a void proceeding valid.” Gowdy v Baltimore and Ohio R.R. Company.: 385 Ill. 86, 92, 52 N.E. 2d 255 (1943).*

Without any courts jurisdiction having been invoked or initiated specific to this matter, the defendant could not and has not been arraigned according to law. Therefore, accordingly, granting the issuance of a Bench Warrant for the Defendant is void ab initio and must be quashed, as this demonstrates a clear excess of jurisdiction. See U.S. v. Will, 449 U.S. 200, 216, 101 S. Ct. 471, 66 L.Ed.2d 392, 406 (1980): “The judge has a

duty to continually inspect the record of the case, and if subject-matter jurisdiction does not appear at any time from the record of the case, then he has the duty to dismiss the case lacking subject-matter jurisdiction. Should a judge act in any case in when he does not have subject-matter jurisdiction, he is acting unlawfully. See also, *Cohens v. Virginia*, 19 U.S. (6 Wheat) 264, 404, 5 L.Ed. 257 (1821), “and without any judicial authority”. The court at all times is duty bound to remain a neutral arbiter and is ministerially obligated to avoid violation of this maxim.

### **ARGUMENT/MEMORANDUM**

In creating the Hawaii Revised Statutes and specifically those statutes relevant to this matter under Division 5. Crimes and Criminal Proceedings - Title 37 Hawaii Penal Code, there is a standard held “We [the United States Supreme Court] have stated time and again that courts must presume that a legislature says in a statute what it means and means in a statute what it says there. When the words of a statute are unambiguous, then, this first canon is also the last: the judicial inquiry is complete.” – Mr. Justice Sam Alito, *Zedner v. United States* U.S. 05-5992.2006. The Hawaii Rules of Penal Procedure have been drafted and ratified in accordance with the aforementioned Hawaii Revised Statutes.

Pursuant to the Hawai’i Rules of Penal Procedure it is important to note the following:

#### **I. SCOPE, PURPOSE AND CONSTRUCTION**

##### **Rule 1. SCOPE**

These rules shall govern the procedure in the courts of the State in all penal proceedings, with the exceptions stated in Rule 54.

##### **Rule 2. PURPOSE AND CONSTRUCTION.**

These rules are intended to provide for the just determination of every penal proceeding. They shall be construed to secure simplicity in procedure, fairness in administration and the elimination of unjustifiable expense and delay.

In view of the foregoing it is apparent to see that the Hawaii Rules of Penal Procedure and the Hawaii Revised Statutes from which these rules emanate apply to this defendant in this matter.

Although referenced throughout these rules, the term Complaint is addressed as follows in these Hawaii Rules of Penal Procedure:

## II. INITIATION OF THE CASE

### Rule 3. APPLICATION FOR ARREST

**(c) Application by Affidavit or Complaint.** An application for the issuance of a warrant of arrest in the form of affidavit(s), or a complaint supported by affidavit(s) shall be subscribed by the complainant under oath or affirmation before the prosecutor and shall forthwith be presented to a district court judge within the circuit in which the offense is alleged to have been committed or who otherwise by law has jurisdiction to issue a warrant of arrest on the application.

### Rule 5. PROCEEDINGS FOLLOWING ARREST

#### **(a) In general**

#### **(2) PROBABLE CAUSE DETERMINATION UPON ARREST WITHOUT A WARRANT.**

As soon as practicable, and, Rule 45 notwithstanding, not later than 48 hours after the warrantless arrest of a person held in custody, a district judge shall determine whether there was probable cause for the arrest. No judicial determination of

probable cause shall be made unless there is before the judge, at the minimum, an affidavit of the arresting officer or other person making the arrest, setting forth the specific facts to find probable cause to believe that an offense has been committed and that the arrested person has committed it. If probable cause is found as aforesaid, an appropriate order shall be filed with the court as soon as is practicable.

If probable cause is not found, or a proceeding to determine probable cause is not held within the time period provided by this subsection, the arrested person shall be ordered released and discharged from custody.

**(3) CONSOLIDATION WITH OTHER PROCEEDINGS.**

The probable cause determination may, in the discretion of the judge, be combined with a bail hearing under subsection (a)(1) of this rule, as an arraignment, a preliminary hearing or any other preliminary proceeding in the criminal case so long as the probable cause determination takes place in the time period provided under subsection (a)(2) of this rule. A probable cause determination shall not constitute an initial appearance unless it is combined with another preliminary proceeding in the same case.

**(b) Offenses other than felony.**

(1) ARRAIGNMENT. In the district court, if the offense charged against the defendant is other than a felony, the complaint shall be filed or the oral charge stated, a copy of such charge and any affidavits in support thereof and a copy of the appropriate order, if any, shall be furnished the defendant, and proceedings shall be had in accordance with this section (b).

**III. THE CHARGE**

Rule 7. INDICTMENT, INFORMATION, OR COMPLAINT

(a) **Use of indictment, information, or complaint.** The charge against a defendant is an indictment, a superseding indictment, and information, or a complaint filed in court, provided that, in any case where a defendant is accused of an offense that is subject to a maximum sentence of less than 6 months in prison....

(d) **Nature and contents.** The charge shall be a plain, concise and definite statement of the essential facts constituting the offense charged...

A complaint shall be signed by the prosecutor.....

III. ARRAIGNMENT AND PREPARATION FOR TRIAL

Rule 9. OBTAINING THE APPEARANCE OF DEFENDANT.

(a) Methods.

(1) SUMMONS. Upon request of the prosecutor, the clerk shall issue a summons for a defendant named:

(i) in the complaint;

(ii) in the indictment; or

(iii) in the information.

(2) WARRANT. The court may order issuance of a warrant .....that no warrant shall issue:

(i) Upon a complaint unless it appears from the sworn complaint, or from an affidavit or affidavits filed with the complaint<sup>1</sup>, that there is

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<sup>1</sup> All underlining of text is done for emphasis.

probable cause to believe that an offense has been committed and that the defendant has committed it;.....

(5) FAILURE TO APPEAR. If a defendant fails to appear in response to

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summons, a warrant may issue.

**A. STATE FAILED TO COMPLY WITH HAWAII STATUTES AND RULES OF PENAL PROCEDURES**

It is established per section II of the HRPP, the manner and method by which a prosecution can be initiated regarding an arrest warrant. Although defendant was arrested without a warrant, the clear requirement for the presentation of any sworn and subscribed statement being made before or presented to the prosecuting attorney is evidenced in HRPP Rule 3(b) and 3(c), but more appropriately in this matter 3(c). These sworn and subscribed statements are required not only to initiate the prosecution, but also the jurisdiction of the court.

Continuing in this same section, HRPP Rule 5(a)(2) directs the proceedings following an arrest without a warrant. Although it is unclear whether this applies only to a person arrested without a warrant who is in custody, it would seem unlawful to deny any person who has been released on bail the right to a probable cause hearing. The defendant in this matter has had no such probable cause hearing, which would seem in keeping with this rule as well as HRPP Rule 2.

The information or complaint is founded upon the mandate that there must be any supporting affidavit. “Any” is clearly defined as meaning at least one<sup>2</sup>. Without any affidavit from any first hand competent fact witness supporting the information or complaint there is no lawful process initiating the prosecution, which could, following a probable cause hearing, grant jurisdiction over the defendant. Without this sufficient process the matter is void ab initio. In summary, the legislature absolutely precluded any prosecutor from filing any information or complaint until at least one affidavit has been made by some credible and competent fact witness charging the defendant with an offense..

In the present case, the District Court is without jurisdiction to allow any proceedings specific to this Defendant because the information or complaint used as the foundation, and the only foundation, of this matter does not meet the HRPP for initiating any prosecution. The matter is clearly void on its face. *See State v. Kaahaaina*, 2001 Haw. App. LEXIS 204 (Haw. Ct. App. Oct. 17, 2001) Holding that the State failed to properly initiate the criminal proceeding against the defendant because the defendant was never formally charged orally or by written complaint supported by sworn statement or affidavit and thus failed to initiate jurisdiction in the District Court; *see also Whiteley v. Warden*, 401 U.S. 560, 565 (U.S. 1971), “The Court held that the complaint consists of nothing more than the complainant’s conclusion that the individuals named therein perpetrated the offence described in the complaint on which the warrant issued clearly

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<sup>2</sup> **Any**. Some; one out of many; an indefinite number. One indiscriminately of whatever kind or quantity. *Federal Deposit Ins. Corporation v. Winton*, C.C.A. Tenn., 131 F.2d 780, 782. One or some (indefinitely). *Siegel v. Siegel*, 135 N.J.Eq. 5, 37 A.2d 57, 58. – Black’s Law Dictionary 5<sup>th</sup> Edition.



could not support a finding of probable cause by the issuing magistrate.” Similarly, the Bench Warrant for the Defendant should be rescinded and quashed by order of the court.

See *U.S. v. Will*, 449 U.S. 200, 216, 101 S. Ct. 471, 66 L.Ed.2d 392, 406 (1980), The judge has a duty to continually inspect the record of the case, and if subject-matter jurisdiction does not appear at any time from the record of the case, then he has the duty to dismiss the case lacking subject-matter jurisdiction. Should a judge act in any case in when he does not have subject-matter jurisdiction, he is acting unlawfully,: *Cohens v. Virginia*, 19 U.S. (6 Wheat) 264, 404, 5 L.Ed. 257 (1821), and without any judicial authority.

**B. LACK OF PROBABLE CAUSE TO FILE THE CHARGE**

It is well-established law that under Hawaii Statute, the trial judge is required to examine the complaint and any affidavits to determine whether probable cause exists to allow filing of the charge. The Fourth Amendment and Hawaii Constitution require a sworn statement when making such a probable cause determination. In Hawaii, the protections afforded by Article 1, Section 7 of the Hawaii Constitution extend to all people including those suspected of a criminal act or charged with one. The Hawaii legislature has never removed the requirement that the trial judge examine the file to determine whether probable cause existed before allowing the charge to be filed. See Haw. R. Penal P. Rule 5 (a)(2).

The requirement pursuant to HRPP Rule 5(a)(2), for a judicial determination of probable cause before allowing a charge to be filed necessarily incorporates the oath or affirmation requirement whether or not a warrant was issued. See *Gerstein v. Pugh*, 420 U.S. 103, 114-118 (1975) Holding that the history of probable cause has always included

an oath requirement.; *also see United States v. Vargas-Amaya*, 389 F.3d 901, 904-905, (9<sup>th</sup> Cir. 2004) Stating that by extension, if Congress intended to incorporate the ‘probable cause’ portion of the Warrant Clause in each statute, it must have also intended to incorporate the “oath or affirmation” portion of the Clause.. The Fourth Amendment clearly applies to the commencement of a criminal case. *See Giordenello v. United States*, 357 U.S. 480, 486-88 (1958) The purpose of a complaint is to ensure that no suspect is arrested without probable cause; *see also State v. Phillips*, 67 Haw. 535, 539 (Haw. 1985) “Probable cause exist when the facts and circumstances within one’s knowledge and of which one has reasonably trustworthy information are sufficient in themselves to warrant a man of reasonable caution is the belief that a crime has been committed.”; *see also State v. Barnes*, 58 Haw. 333, 338 (Haw. 1977) “To justify an arrest based on probable cause, the police officer must be able to point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion.” *see also State v. Kim*, 68 Haw. 286, 290 (Haw. 1985) Holding that a police officer must have at least a reasonable basis of specific articulable facts to believe a crime has been committed to order a driver out of a car after a traffic stop. Finally, probable cause is not determined by whether the defendant has proper notice of a charge. It is the independent determination by a judicial officer that probable cause exists based on sworn statements that protect all persons. *See Aguilar v. Texas*, 387 U.S. 108, 111 (1964).

Further, in addition to the Fourth Amendment violation, failure to follow Hawaii Rules of Penal Procedure and HRS. § 805-1 violated the Defendant’s due process rights. *See State v. Kaahaaina*, 2001 Haw. App. LEXIS 204 (Haw. Ct. App. Oct. 17, 2001)

Holding that defendant was improperly charged because the complaint and summons forms used by the officer failed to comply with HRS. § 805-1 and HRPP Rule 7(d) and the arraignment in district court failed to comply with the requirements of HRPP Rule. 5(b)(1)); *see also* *McFarland v. American Sugar Refining Co.*, 241 U.S. 79, 86 (1916) “But it is not within the province of a legislature to declare an individual guilty or presumptively guilty of a crime.”. The right to be tried by a court with jurisdiction is a critical element of the federal constitutional rights to a fair trial. *See Gomez v. United States*, 490 U.S. 858, 876 (1989); *see also United States v. Juvenile Male*, 336 F.3d 1107, 1111 (9<sup>th</sup> Cir. 2003) “We cannot agree, however, that for a court to proceed in a criminal case on the absence of or in excess of its jurisdiction can ever be harmless.”. Thus, a claim of lack of subject-matter jurisdiction, “because it involves a court’s power to hear a case, can never be forfeited or waived.” *United States v. Cotton*, 535 U.S. 625, 630 (2002); *see also Tamashiro v. Dep’t of Human Servs.*, 112 Haw. 388, 398 (Haw. 2006) Noting that “the lack of jurisdiction over the subject matter cannot be waived by the parties. If the parties do not raise the issue, a court *sua sponte* will, for unless jurisdiction of the court over the subject matter exists, any judgment rendered is invalid.”

In the present case, the Plaintiff failed to provide any sworn statement or affidavit supporting the arrest and charges of the Defendant. It is uncontested that the initiation of the prosecution was based on only one document in the file, the complaint with the subsequent amendments thereto. That which was stated thereon was insufficient as a matter of law to determine probable cause. By all the foregoing evidence and authorities, it is established that because the prosecution has not been initiated the jurisdiction of the court specific to this matter cannot and has not been initiated or invoked. Thus, the

erroneous submission of the insufficient complaint affected the Defendant's rights and cannot be disregarded. Accordingly, the Bench warrant must be quashed. See *Klopper v. North Carolina*, 386 U.S. 213, at pages 222-223 (1967).”The protections of the Constitutions apply to state court actions under the Fourteenth Amendment of the United States Constitution.”

**WHEREFORE**, the Defendant respectfully requests that this Honorable Court enter an Order quashing the Bench Warrant and for such other relief as the Court deems appropriate.

Respectfully submitted,

/s/ Your Name

Your Name

**AFFIDAVIT IN SUPPORT OF MOTION TO QUASH BENCH WARRANT**

STATE OF NEVADA        )  
  ) ss  
COUNTY OF CLARK     )

**Your Name**, being first duly sworn upon oath, deposes and says as follows:

I am the Defendant in the above-entitled action. I have personal knowledge of the facts contained in my Motion and in this Affidavit and am competent to testify to these facts. The statements in this Motion and Affidavit are true and correct to the best of my knowledge.

FURTHER YOUR AFFIANT SAYETH NOT:

\_\_\_\_\_  
Your Name

**SUBSCRIBED** and **SWORN** to before me this \_\_\_\_\_ day of \_\_\_\_\_, 2012.

\_\_\_\_\_  
**NOTARY PUBLIC**

**CERTIFICATE OF SERVICE**

I certify that a true and correct copy of the foregoing Motion to Quash Bench Warrant has been served electronically and/or by regular U.S. mail, postage prepaid, this \_\_\_\_\_ day of \_\_\_\_\_, 2012, upon the Plaintiff at:

Keith X. XXXXXXX 2027  
Prosecuting Attorney  
Kurt Y. XXXXXXX 8870  
Deputy Prosecuting Attorney  
City and County of Honolulu  
1060 Richards Street, 9<sup>th</sup> Floor  
Honolulu, Hawaii 96813  
Ph: 768-7400 / Fax No. 768-7513  
Attorneys for State of Hawaii

By: \_\_\_\_\_

Address: \_\_\_\_\_

**IN THE DISTRICT COURT OF THE FIRST CIRCUIT  
HONOLULU DIVISION  
STATE OF HAWAII**

STATE OF HAWAII, )  
 )  
 **Plaintiff,** )  
 v. )  
 )  
 YOUR NAME, )  
 )  
 **Defendant.** )

Case No. 1P111-05716  
Case No. 1DTA-11-02496  
Case No. 1P111-05717

**ORDER QUASHING BENCH WARRANT**

**IT IS HEREBY ORDERED**, that the Order directing the issuance of the Bench Warrant on the \_\_\_\_ day of \_\_\_\_, 20\_\_\_\_, is rescinded and that all warrants bearing the same case number concerning the Defendant are hereby quashed.

**Dated:** \_\_\_\_\_

\_\_\_\_\_  
**JUDGE**