

What's a "Detention"?

"The law helps the vigilant, before
those who sleep on their rights."
California Civil Code § 3527

...a detention is expanded to cover any occasion where an officer personally contacts an individual whom the officer suspects may be involved in some criminal activity...

...a detention occurs if the suspect is not free to leave at will -- if he is kept in the officer's presence by physical restraint, threat of force, or assertion of authority. (See, e.g., *Restani v. Superior Court* (1970) 13 Cal.App.3d 189, 197 [91 Cal.Rptr. 429].) But the definition is underinclusive: actual or threatened physical restraints are the characteristics of a full-blown arrest (Pen. Code, § 835), and an officer will frequently use more subtle methods to detain a suspect whom he wishes simply to question about possible criminal activity. The definition is also overinclusive: either through fear or respect, many persons who are not in fact under detention nevertheless do not feel free to leave at will when a uniformed police officer indicates a desire to talk with them.

Detention decisions normally arise when an officer is confronted by a spontaneous, fast-changing situation. Often, if action is to be taken, it necessitates quick, sometimes immediate, action on the part of the officer.

In re Tony C., 21 Cal.3d 888

[Crim. No. 20142. Supreme Court of California. August 24, 1978.]

The United States Supreme Court has identified three categories of police contact with persons. The first is referred to as a "**consensual encounter**" in which there is no restraint on the person's liberty. There need be no objective justification for such an encounter. The second type, called "detention," involves a **seizure** of the individual for a limited duration and for limited purposes. A constitutionally acceptable detention can occur "if there is an **articulable suspicion that a person has committed or is about to commit a crime.**" The third type involves seizures in the nature of an arrest, which may occur only if the police have **probable cause** to arrest the person for a crime. (*Florida v. Royer*, supra, 460 U.S. 491; *Wilson v.*

Superior Court, supra, 34 Cal.3d 777.)

PEOPLE v. BAILEY, 176 Cal.App.3d 402

[No. H000583. Court of Appeals of California, Sixth Appellate District. December 17, 1985.]
Emphasis added]

[2] " [I]n order to justify an investigative stop or detention the circumstances known or apparent to the officer must include specific and articulable facts causing him to suspect that (1) some activity relating to crime has taken place or is occurring or about to occur, and (2) the person he intends to stop or detain is involved in that activity. Not only must he subjectively entertain such a suspicion, but it must be objectively reasonable for him to do so: the facts must be such as would cause any reasonable police officer in a like position, drawing when appropriate on his training and experience [citation], to suspect the same criminal activity and the same involvement

by the person in question. The corollary to this rule, of course, is that an investigative stop or detention predicated on mere curiosity, rumor, or hunch is unlawful, even though the officer may be acting in complete good faith. [Citations.]' " (In re James D. (1987) 43 Cal.3d 903 , 914 [239 Cal.Rptr. 663, 741 P.2d 161]; cf. Scott v. United States (1978) 436 U.S. 128, 138 [56 L.Ed.2d 168, 178, 98 S.Ct. 1717].)

People v. Renteria , 2 Cal.App.4th 440

[No. B055019. Second Dist., Div. Six. Jan 7, 1992.]

[2] It is a well recognized rule in California that an officer may stop a motorist or pedestrian for questioning under circumstances short of probable cause for an arrest. (People v. Mickelson, 59 Cal.2d 448 , 450 [30 Cal.Rptr. 18, 380 P.2d 658]; People v. Collins (Cal.App.) 80 Cal.Rptr. 310; People v. Villafuerte, 275 Cal.App.2d 531 , 533 [80 Cal.Rptr. 279]; People v. Brown, 271 Cal.App.2d 391 , 394-395 [76 Cal.Rptr. 568]; People v. Stephenson, 268 Cal.App.2d 908 , 910 [74 Cal.Rptr. 504]; People v. Manis, 268 Cal.App.2d 653 , 658 [74 Cal.Rptr. 423]; People v. Beal, 268 Cal.App.2d 481 , 484 [73 Cal.Rptr. 787]; People v. Cruppi, 265 Cal.App.2d 9 , 11 [71 Cal.Rptr. 42]; People v. Henze, 253 Cal.App.2d 986 , 988 [61 Cal.Rptr. 545]; People v. Perez, 243 Cal.App.2d 528 , 531 [52 Cal.Rptr. 514].) [3] The generally accepted criterion for determining the validity of a temporary stopping for investigation is whether the circumstances would have indicated to a reasonable man in like position that an investigation was necessary to a proper discharge of the officer's duties. (People v. Gibson, 220 Cal.App.2d 15 , 20 [33 Cal.Rptr. 775]; Williams v. Superior Court, 274 Cal.App.2d 709 , 711 [79 Cal.Rptr. 489]; People v. Perez, supra, at p. 531; People v. Collins, supra; People v. Manis, supra, at p. 659.)

Cornforth v. Department of Motor Vehicles , 3 Cal.App.3d 550

[Civ. No. 26694. Court of Appeals of California, First Appellate District, Division Four. January 16, 1970.]

[1a] There was no probable cause to arrest petitioner for any offense. [2] "Although circumstances short of probable cause to make an arrest may still justify an officer in stopping a pedestrian on the streets for questioning, a police officer may not detain and question a person when there are no circumstances which would indicate to a reasonable man in a like position that such a course was necessary to the proper discharge of the officer's duties. [Citation.]" (People v. Moore, 69 Cal.2d 674 , 682-683 [72 Cal.Rptr. 300, 446 P.2d 800].) [1b] There were in the facts heretofore related no suspicious circumstances sufficient to justify the officers in the first place to stop, pat down the young men and later to search the vehicle. "Neither good faith of the officers nor an inarticulated hunch will suffice to justify the intrusion (Terry v. Ohio, ... 392 U.S. 1, 22 [20 L.Ed.2d 899, 906, 88 S.Ct. 1868]). Here there was even less." (Willett v. Superior Court, 2 Cal.App.3d 555 , 559 [83 Cal.Rptr. 22].)

Stern v. Superior Court , 18 Cal.App.3d 26

[Civ. No. 38126. Court of Appeals of California, Second Appellate District, Division Four. June 10, 1971.]

[3] The officer's mere hunch will not validate his conduct, even though in good faith. "'There must be a "rational" suspicion by the peace officer that some activity out of the ordinary is or has taken place ... some indication to connect the person under suspicion with the unusual activity ... [and] some suggestion that the activity is related to crime.' [Citation.] Where the events are as consistent with innocent activity as with criminal activity, a detention based on those events is [18 Cal.App.3d 30] unlawful. [Citations.]" (Irwin v. Superior Court, 1 Cal.3d 423 , 427 [82 Cal.Rptr. 484, 462 P.2d 12].)

Ibid.

[4] Moreover, the fact that an arrest is made does not justify an exploratory search for evidence of other crimes. (People v. Roberts, 47 Cal.2d 374 , 378 [303 P.2d 721].) [1c] The search in the present case was made incident to an illegal arrest and was patently invalid and improper.

Ibid.

Consent secured at gunpoint following an illegal arrest cannot be relied upon to render the evidence obtained by a search and seizure pursuant thereto admissible. (People v. Haven, 59 Cal.2d 713 , 718-719 [31 Cal.Rptr. 47, 381 P.2d 927].)

Ibid.

An arrest does not justify an [2 Cal.App.3d 560] exploratory search for evidence of other crimes (People v. Roberts, 47 Cal.2d 374, 378 [303 P.2d 721]; People v. Mills, 148 Cal.App.2d 392, 401 [306 P.2d 1005]).

Willett v. Superior Court , 2 Cal.App.3d 555

[Civ. No. 9948. Court of Appeals of California, Fourth Appellate District, Division One. December 11, 1969.]

Defendant makes a prima facie case of unlawful arrest when he establishes that arrest was made without a warrant, and burden rests on prosecution to show proper justification.

People v. Holguin (1956) 145 Cal.App.2d. 520 [302 P.2d. 635].

...a reasonable, articulable suspicion of criminal activity is needed to justify a detention.

People v. Gonzalez (1992) 7 Cal.App.4th 381 [8 Cal.Rptr.2d 640]

People v. Castellon (1999) , 76 Cal.App.4th 1369

[6] The basic premise behind "consensual encounters" is that a citizen may consent voluntarily to official intrusions upon interests protected by the Constitution. If the citizen acts in reasonable submission to a show of authority, then his actions are not voluntary or consensual. Where consensual, consent may be withdrawn at any time. (People v. Gurtenstein (1977) 69 Cal.App.3d 441 , 451 [138 Cal.Rptr. 161].) The citizen participant in a consensual encounter may leave, refuse to answer questions or decline to act in the manner requested by the authorities.

...if the manner in which the request was made constituted a show of authority such that appellant reasonably might believe he had to comply, then the encounter was transformed into a detention.

People v. Franklin , 192 Cal.App.3d 935

[3] The fact the restraint on Ms. Spicer's liberty was minimal does not make the restraint a reasonable one. The Fourth Amendment applies to all seizures of the person including those consuming no more than a minute. (United States v. Brignoni-Ponce, supra, 422 U.S. at pp. 879-880 [45 L.Ed.2d at pp. 615-616].)

...evidence also supports the conclusion Ms. Spicer's freedom of movement was restrained by a show of authority. (Mendenhall, supra, 446 U.S. at p. 553 [64 L.Ed.2d at p. 508];Royer, supra, 460 U.S. at p. 501 [75 L.Ed.2d at p. 239, 103 S.Ct. at p. 1326];In re Tony C. (1978) 21 Cal.3d 888 , 895 [148 Cal.Rptr. 366, 582 P.2d 957].) She was confronted by a uniformed officer almost immediately after the car in which she was riding was stopped. Without any explanation or prefatory remarks, the officer requested her driver's license.

An unequivocal verbal command is far more likely to produce the perception of restricted liberty than a mere approach (People v. Jones (1979) 96 Cal.App.3d 820 , 825-826 [158 Cal.Rptr. 415]), casual banter (People v. Warren, supra, 152 Cal.App.3d at p. 996), or an ambiguous statement which could be either a command or a request. (People v. King (1977) 72 Cal.App.3d 346 , 349-350 [139 Cal.Rptr. 926].) Furthermore, "'a reasonable person might read an officer's "May I" as the courteous expression of a demand backed by force of law.'" (Schneckloth v. Bustamonte (1973) 412 U.S. 218, 289 [36 L.Ed.2d 854, 898, 93 S.Ct. 2041], Marshall, J., dis.) The attitude expressed by Ms. Spicer toward the police is credible and almost certainly typical. She testified,

"I just felt like if a policeman should ever stop me if he wants my purse he will ask me. If he asks me to get out of car I am coming out with [my] hands free. I have read too many people getting shot these days by policemen who thought" fn. 3

PEOPLE v. SPICER, 157 Cal.App.3d 213

[Crim. No. 45072. Court of Appeals of California, Second Appellate District, Division Seven. June 15, 1984.]

Where, however, an investigative stop or detention is "predicated on circumstances which, when viewed objectively, support a mere curiosity, rumor, or hunch", the stop is unlawful even though the officer may have been acting in good faith. (People v. Conway (1994) 25 Cal.App.4th 385, 389 [30 Cal.Rptr.2d 533].) fn. 2

People v Ramirez, 49 Cal.Rptr.2d 311

QUESTION: At what section of the CALIFORNIA VEHICLE CODE has the Legislature authorized a "DETENTION"?

HINT: None of them. The Legislature HAS used the words "warrantless arrest". You MAY be "DETAINED" AFTER you are *ARRESTED

From WordNet 1.6 :

exigent

- aj 1: demanding attention; "clamant needs"; "a crying need"; "regarded literary questions as exigent and momentous"- H.L.Mencken; "insistent hunger"; "an instant need"
[syn: clamant, crying, insistent, instant]
- 2: requiring precise accuracy; "an exacting job"; "became more exigent over his pronunciation"
[syn: exacting]

From Webster's Revised Unabridged Dictionary (1913) :

Exigent \Ex"i*gent\, n.

- 1. Exigency; pressing necessity; decisive moment. [Obs.]

Why do you cross me in this exigent? --Shak.

- 2. (o. Eng. Law) The name of a writ in proceedings before outlawry. --Abbott.

From Webster's Revised Unabridged Dictionary (1913) :

Exigent \Ex`i*gent\, a. [L. exigens, -entis, p. pr. of exigere to drive out or forth, require, exact. See Exact.]
Exacting or requiring immediate aid or action; pressing; critical. ``At this exigent moment." --Burke.

EVIDENCE CODE

940. To the extent that such privilege exists under the Constitution of the United States or

the State of California, a person has a privilege to refuse to disclose any matter that may tend to incriminate him.

...Any evidence that accused was threatened, tricked or cajoled into waiver will show that he did not voluntarily waive privilege to remain silent."

Miranda v Arizona, 384 U.S. 468.

"The privilege against self-incrimination is neither accorded to the passive resistant, nor the person who is ignorant of his rights, nor to one indifferent thereto. It is a fighting clause. Its benefits can be retained only by sustained combat. It cannot be claimed by an attorney or solicitor. It is valid only when insisted upon by a belligerent claimant in person."

US v Johnson, 76 F. Supp 538.

Founded suspicion must exist at the time the officer initiates the stop.

U.S. v. Thomas, 863 F2d. 622, 625

In evaluating whether founded suspicion exists, the totality of circumstances should be considered.

U.S. v. Sokolow, 490 U.S. 1, 8; ***U.S. v. Hernandez-Alvarado*** , 891 F2d. 1414.

Police officer may not rely on good faith, inarticulable hunches, or generalized suspicions to meet standard of reasonable suspicion to justify investigatory stop.

U.S. v. Velarde, 823 F. Supp. 792. (D. Hawaii 1993)

Founded suspicion exists when the officer is aware of specific articulable facts that, together with rational inferences drawn from them, reasonable warrant a suspicion that the person to be detain has committed or is about to commit a crime.

U.S. v. Cortez 449 U.S. 411, 416, ***U.S. v. Robert L.***, 874 F2d. 701, 703

The U.S. Supreme Court has defined and limited investigative detention. Any restraint of a person for the purpose of checking identification and asking questions or detaining him or her briefly while obtaining is such

a detention; it comported with the Fourth Amendment only when based on articulable facts supporting a reasonable suspicion that the person has committed a criminal offense. The mere presence with someone

who has a outstanding arrest warrant is not sufficient.

U.S. v. Hensley, 469 U.S. 221 [83 L.Ed.2d. 604].

In a unanimous decision the U.S. Supreme Court held: 'demand for identification is an intrusion on the interests prohibited by the Fourth Amendment and requires reasonable suspicion based on articulable facts

relating to the person or his or her conduct, in order to be lawful.

When police officers, with or without arresting an individual, detain the individual for the purpose of requiring him to identify himself, they perform a seizure of person subject to the requirements of the Fourth

Amendment. ...that the defendant's conviction requiring identification upon a lawful stop was improper, the

police officer's stopping the defendant and requiring him to identify himself violated defendant's First, Fourth and Fifth Amendments was in violation of...United States Constitution when the police officer has no reasonable suspicion to believe that the defendant was engaged or been engaged in criminal conduct. ***Brown v. Texas***, (1979) 443 U.S. 46 [61 L.Ed.2d. 357].

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

Article I, Sec. 19, Constitution of the State of California, 1849

This enumeration of rights shall not be construed to impair or deny others, retained by the people.

Article I, Sec. 21, Constitution of the State of California, 1849

The people shall have the right freely to assemble together, to consult for the common good, to instruct their representatives, and to petition the legislature for redress of grievances.

Article I, Sec. 10, Constitution of the State of California, 1849

A constitutional amendment adopted in 1974 elevated the right of privacy to an "inalienable right" expressly protected by force of constitutional mandate (Cal. Const. art. I, 1). It may be safely assumed that the right of privacy extends to one's confidential financial affairs as well as to the details on one's personal life. *Valley Bank of Nevada v. Superior Ct.* (1975) 15 Cal.3d. 652, [125 Cal.Rptr. 553, 542 P.2d. 977]

"The Fourth Amendment, of course, 'applies to all seizures of the person, including seizures that involve only a brief detention short of traditional arrest.' *Davis v. Mississippi*, 394 U.S. 721 (1969); *Terry v. Ohio*, 392 U.S. 1, 16-19 (1968). '[W]henver a police officer accosts an individual and restrains his freedom to walk away, he has 'seized' that person... and the fourth Amendment requires that the seizure be 'reasonable'."

U.S. v. Brignoni-Ponce, 422 U.S. 873, 878 (1975)"

"But even assuming that purpose (prevention of crime) is served to some degree by stopping and demanding identification from an individual without any specific basis for believing he is involved in criminal activity, the guarantees of the Fourth Amendment do not allow it..."

"We need not decide whether an individual may be punished for refusing to identify himself in the context of a lawful investigatory stop which satisfies Fourth Amendment requirements. See *Dunaway v. New York*, 442 U.S. 200,210 n.12 (1979); *Terry v. Ohio*... the county judge who convicted appellant was troubled by this question, as shown by the colloquy set out in the appendix to this opinion."

"Accordingly, appellant may not be punished for refusing to identify himself,..."

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

"Any evidence that accused was threatened, tricked or cajoled into waiver will show that he did not voluntarily waive privilege to remain silent."

Miranda v Arizona, 384 U.S. 468.

"To maintain an action under 42 USC 1983, it is not necessary to allege or prove that the defendants intended to deprive plaintiff of his Constitutional rights or that they acted willfully, purposefully, or in

a furtherance of a conspiracy. . . it is sufficient to establish that the deprivation. . . was the natural consequences of defendants acting under color of law. . . ."

Ethridge v. Rhodos, DC Ohio 268 F Supp 83 (1967), *Whirl v. Kern* CA 5 Texas 407 F 2d 781 (1968)

A police officer will be afforded little assistance in his or her detention decision by an open-ended general standard, such as "reasonableness," [21 Cal.3d 904] which "is obviously much too amorphous either to guide or regulate the police." (Amsterdam, op. cit. supra, 58 Minn.L.Rev. at pp. 414-415; cf., post, at pp. 905-907.) As commands or controls on police officers, these types of rules are "splendid in [their] flexibility, [but] awful in [their] unintelligibility, unadministrability, enforcibility and general ooziness." (Amsterdam, op. cit. supra, at p. 415.)

In re Tony C., 21 Cal.3d 888

[Crim. No. 20142. Supreme Court of California. August 24, 1978.]

From WordNet 1.6 :

birthright

- n 1: a right or privilege that you are entitled to at birth; "free public education is the birthright of every American child"
- 2: an inheritance coming by right of birth (especially by primogeniture)
[syn: patrimony]
- 3: personal characteristics that are inherited at birth

From Webster's Revised Unabridged Dictionary (1913) :

Birthright \Birth"right`, n.

Any right, privilege, or possession to which a person is entitled by birth, such as an estate descendible by law to an heir, or civil liberty under a free constitution; esp. the rights or inheritance of the first born.

Lest there be any . . . profane person, as Esau, who for one morsel of meat sold his birthright.

Heb. xii. 16.

