

# TENNESSEE TRAFFIC STOPS - WHAT TO EXPECT AND WHAT IS ILLEGAL

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At some point in your life the odds are very good that you will look in your rearview mirror while driving and see the flashing lights of a police cruiser. No one looks forward to a traffic stop, even if the worst they can expect is a routine ticket for a moving violation. In most instances, that is all that does happen – the officer writes a ticket, or gives you a warning if you are lucky, and you are on your way.

Occasionally though, a routine traffic stop turns into a criminal investigation. What causes a routine stop to turn into an investigation? Does an officer need probable cause to do more than issue a ticket? Can a K-9 unit be brought in to “sniff” your vehicle? What rights do you have during a traffic stop? All of these are valid questions and ones to which you should know the answers.

Keep in mind that the legal issues surrounding traffic stops are extremely fact dependent, meaning that a small change in the fact pattern between two similar stops could result in different legal analyses with regard to the legality of the stop and subsequent investigation. For this reason, it is always best to consult with an experienced Tennessee criminal defense attorney about your specific traffic stop.

## Your Basic 4<sup>th</sup> Amendment Rights

In the United States, the vast majority of your legal rights in connection with any type of encounter with law enforcement are found in the United States Constitution as well as the individual state constitutions. A discussion of your rights during a traffic stop, therefore, begins with the Fourth Amendment which states:

“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.”

Although the stop and subsequent search of an automobile is indeed a potential “search and seizure” for 4<sup>th</sup> Amendment purposes, the Supreme Court of the United States, or SCOTUS, carved out an exception to the warrant requirement for vehicles a long time ago. The rationale was originally based on the movable nature of a vehicle and the likelihood that evidence could be lost; however, the Court subsequently focused on the reduced expectation of privacy a motorists has when operating a vehicle on a public roadway as well. The bottom line is that the vehicle exception means a warrant is not required to “seize” (stop) a vehicle.

## When *Can* an Officer Stop a Vehicle?

The vehicle exception to the 4<sup>th</sup> Amendment warrant requirement only means that a warrant is not required before a law enforcement officer can conduct a traffic stop. It does *not* mean an officer can stop a vehicle without reason. To effectuate a traffic stop an officer must have probable cause or some “articulable and



reasonable suspicion” that a traffic violation or some other criminal activity has occurred. To actually search a vehicle an officer is still required to have probable cause.

### **Is a Traffic Stop a “Seizure?”**

Yes. A traffic stop is considered a seizure that begins the moment the vehicle comes to a stop. As such, both the driver of the vehicle and any passengers in the vehicle have “standing” to challenge the stop and/or a subsequent search of the vehicle. “Standing” refers to the legal ability to bring a lawsuit or, in this case, to challenge something in court.



## Are “Pretextual” Stops Allowed?

The law requires an officer to have a reason to stop a vehicle; however, can that reason be a pretext for the officer to check for drugs or other criminal activity? The simple answer is “yes.” Some common pretextual stops include:

- Broken license plate light (yes, most cars have a light above the license plate that no one ever thinks to check)
- Failure to signal a turn or lane change
- Broken taillight or headlight
- Loud muffler
- Speeding
- Cracked windshield
- Expired plate

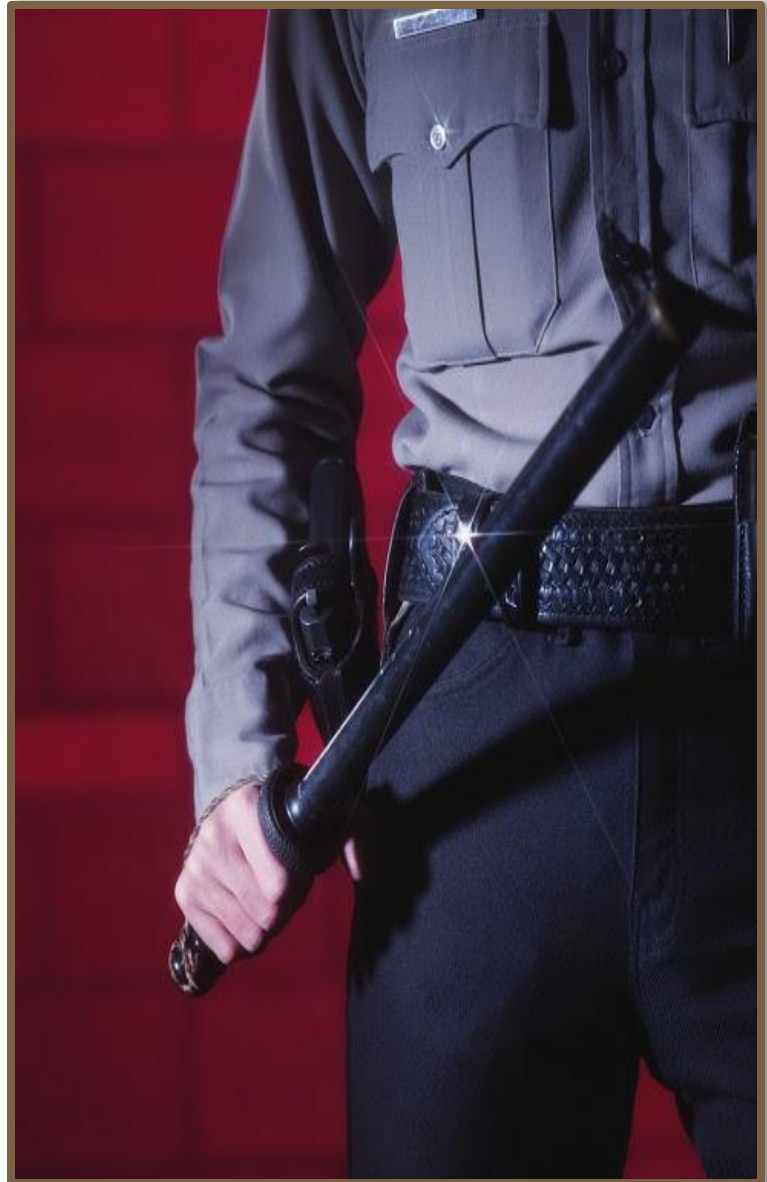
These “pretexts” are used as a reason to conduct a traffic stop when the subjective reason for the stop is to look for evidence of a more serious crime, most often related to drugs. Though pretextual stops are legal there are guidelines and limits that apply when a pretext is used to stop a vehicle.

## The Limits of a Traffic Stop – Can the Police Conduct a Search?

During a basic traffic stop an officer may conduct what is known as a “*Terry* frisk” or “pat-down” of the driver and/or passengers if the officer has reason to believe they are armed and dangerous. This type of search is limited to patting down the outer clothing to feel for weapons.

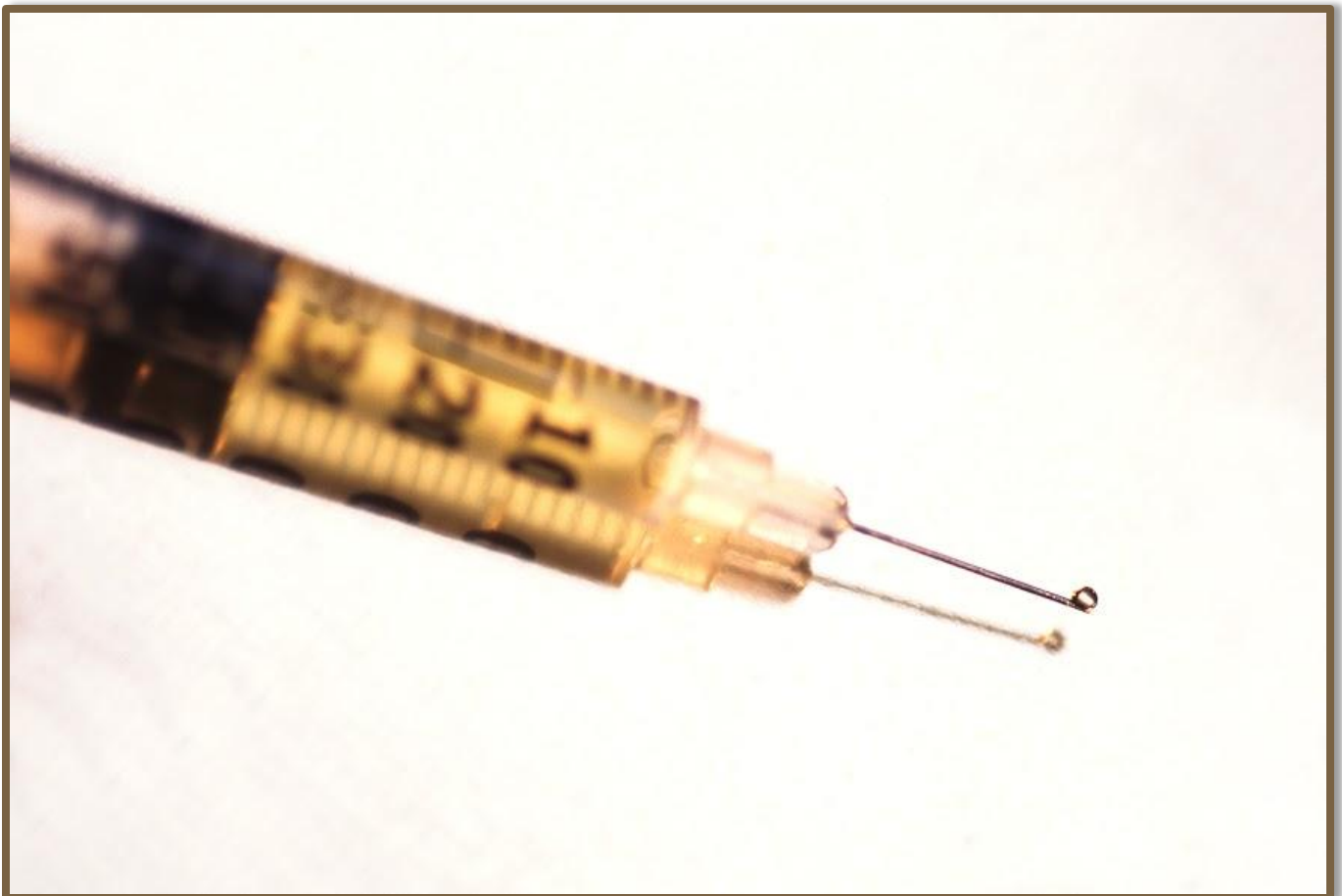
Beyond a *Terry* search is where the law becomes complicated and extremely fact dependent; however, it is important to have a general idea of the limits of a basic traffic stop. Although a pretext can be used to stop a vehicle, a full blown search of the vehicle cannot be conducted unless the officer has probable cause and/or the driver of the vehicle is arrested. Even if the driver is arrested a search *could* still be found to be illegal

depending on the need to impound the vehicle and the breadth of the “inventory” search conducted after impounding the vehicle.



## Defining "Probable Cause"

The term "probable cause" is found within the Fourth Amendment and is often used when discussing searches and seizures. Probable cause can be found when there is a "reasonable basis for believing that a crime may have been committed (for an arrest) or when evidence of the crime is present in the place to be searched (for a search)." For example, if the officer can see, in plain sight, drug paraphernalia or open liquor bottles that would suffice as probable cause to search the vehicle. Often, however, the issue of whether or not an officer had the requisite probable cause needed to search a vehicle is challenged by the defense after the fact if a search resulted in an arrest.





## Can a K-9 Unit Be Called Out to “Search” My Vehicle during a Traffic Stop?

This is one of the most controversial areas of the law at present. A trained police dog can “hit” on even small amounts of drugs or dangerous substances that are well hidden in a vehicle, making them valuable tools in a traffic stop where the officer suspects contraband is hidden in the vehicle. Most patrol officers, however, are not K-9 units, meaning a K-9 unit must be called to the scene in order to be put to use. This, inevitably, lengthens the traffic stop and results in a longer seizure in most cases.

That very issue was before SCOTUS recently in *Rodriguez vs. U.S.* In that case the court held that “a police stop exceeding the time needed to handle the matter for which the stop was made violates



the Constitution’s shield against unreasonable seizures.” In essence, this means that a traffic stop cannot be extended beyond the time needed to write the ticket or complete the original reason for the stop in order to bring in a K-9 unit. In *Rodriguez*, the additional time spent waiting for the K-9 unit was only 7-10 minutes; however, the high court still found it to be a violation of the motorist’s constitutional rights.

## What about Passengers?

Often, when a vehicle is stopped there are passengers in the vehicle along with the driver. SCOTUS has held that a driver is subject to a seizure when a vehicle comes to a stop *as are the passengers in the vehicle*. Therefore, a passenger has the same constitutional rights and protections that a driver has during a traffic stop. Likewise, a passenger may challenge anything that occurred during a traffic stop if those actions led to the passenger's detention and/or arrest.

If you were arrested subsequent to a traffic stop that turned into a search and seizure it is always best to consult with an experienced Tennessee criminal defense attorney to analyze the traffic stop to determine if it violated your constitutional rights.

Justia, [Vehicular Searches](#)

Tennessee Bar Association, [Criminal Investigation During a Traffic Stop](#)

SCOTUSBlog, [Rodriguez vs. United States](#)

## About Bennett and Michael, Attorneys at Law



The law firm of Bennett & Michael is located on the historic public square in Murfreesboro, Tennessee. We offer knowledgeable and effective representation for families in divorce and family law situations, injured victims of negligent accidents, and those charged with misdemeanor or felony offenses.

Our firm takes pride in being a local law firm that delivers superior results at competitive prices right here at home for the people of Murfreesboro, Smyrna, La Vergne, and the greater Rutherford County area. Our staff is professional and helpful, and our attorneys are experienced litigators and trial lawyers.

When you need legal help, you should be confident that the lawyer you choose will provide you with exceptional, trustworthy, and effective services. Our experienced, dedicated, and compassionate lawyers and legal staff are committed to always protecting clients' rights and relentlessly fighting for their best interests. Enlist the unyielding advocacy at Bennett & Michael, and you can trust that you and your family will get the results, service, and respect that you deserve. You won't be disappointed.