

DRUG AND DWI CHECKPOINTS

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One of the newest and popular tools to combat the drug and driving while intoxicated problems in society is the use of checkpoints. These materials will seek to outline the current status of the law in the State of Missouri and the nation.

The Fourth Amendment of the United States Constitution protects people from unreasonable searches and seizures. Article I, Section 15 of the Missouri Constitution provides: “That the people shall be secure in their persons, papers, homes and effects, from unreasonable searches and seizures; and no warrant to search any place, or seize any person or thing, shall issue without describing the place to be searched, or the person or thing to be seized, as nearly as may be; nor without probable cause, supported by written oath or affirmation.”

In regard to sobriety checkpoints, the leading cases in Missouri are *State v. Welch*, 755 S.W.2d 624 (Mo.App.W.D. 1988) and *State v. Canton*, 775 S.w.2d 352 (Mo.App.E.D. 1989). Those cases set forth the following four requirements which must be met to establish a lawful sobriety checkpoint:

- (1) It was conducted pursuant to a designed plan based upon specific data concerning alcohol related accidents in the area;
- (2) The procedures were in writing, the checkpoint was established by written order of a command officer, was supervised by high-ranking officers and full instructions were given including a copy of the order to all field personnel;
- (3) The checkpoint was established in a way to give maximum notice to the drivers of what was ahead and to provide for their safety;
- (4) The delay to drivers was minimal.

The first requirement set forth in Welch at 631 is that the checkpoint be conducted pursuant to a designed plan based upon specific data concerning alcohol-related accidents occurring in the area. In Welch, the State presented evidence that a study was conducted to determine the location of alcohol-related accidents occurring in the area prior to the

checkpoint being designated. It was from this study that the location was selected due to the area's high incidents of alcohol-related accidents. In Canton, the court ruled the roadblock was unconstitutional partially because the location selected for the roadblock was not based on any specific data.

The second requirement set forth in Welch is that the procedures for the checkpoint be in writing, that the checkpoint was established by written order of a command officer, the operation of the checkpoint was supervised by high-ranking officers, and full instructions were given including a copy of the order to all field personnel. In Welch, the order designated specific guidelines and procedures from which the officers were to follow. Prior to the roadblock, a meeting was held with field personnel to discuss their duties and the manner in which the roadblock was to be conducted and each officer was given a copy of the written order. In Canton, the court ruled the roadblock was unconstitutional based upon the fact that the field officers had not received a copy of the order nor received adequate training.

The third requirement as set forth in Welch is that the checkpoint be established in a way to give maximum notice to the drivers of what was ahead and to provide for their safety. In Welch, it was determined that the checkpoint gave maximum notice to the drivers of what was ahead. In fact, an easily-read sign reading "Sobriety Checkpoint Ahead" was posted for all oncoming traffic, flares were positioned along the roadway to guide motorists, field personnel wore reflective vests, and patrol cars with flashing lights were stationed so as to be easily identified by motorists.

The fourth requirement as set forth in Welch is that the delay to drivers be minimal. In Welch, the majority of vehicles were detained for less than sixty seconds. One witness described this as meaning no car was to be unduly detained. In addition, the plan in Welch provided that if traffic began to "back up" field personnel were instructed to waive the vehicles through in order to avoid undue congestion. The plan specified that the "back up" number was four or five vehicles and that "back up" of vehicles occurred three or four times. Lastly, if a driver was suspected of being intoxicated the driver was requested by the field officer to move the vehicle to a nearby parking area, in an effort to alleviate undue delay to the other vehicles going through the roadblock.

The United States Supreme Court first addressed the constitutionality of sobriety checkpoints in Michigan Department of State Police v. Sitz, 496 U.S. 444 (1990) and held that the Constitution does not prohibit a state's use of highway sobriety checkpoints. The court concluded that the Michigan sobriety checkpoint program in which approximately 1.5% of drivers passing through the checkpoint were arrested for alcohol impairment was sufficiently effective to justify the program. Unlike the inconsistent chain of federal and state cases addressing the issue of the constitutionality of drug checkpoints, the sobriety checkpoint cases are uniform in ruling that the reasonableness of the police procedures employed at the checkpoint determine whether the Fourth Amendment has been violated. United States v. Slater, 2005 WL 1522740 (8th Cir. 2005). Park v. Forest Service of the United States, 69 F. Supp. 2d 1165, 1170 (W.D.Mo. 1999). Courts are to consider the following factors in determining the reasonableness of checkpoints: (1) the neutral criterion implicit in a systematic procedure, (2) presence of warning signs, (3) the safety of the location, (4) the productivity of the checkpoint, (5) standardized procedures for the operation of the checkpoint and (6) whether the checkpoint was a pretext to uncover evidence of more serious criminal activity.

In regard to drug checkpoints, the current leading case is City of Indianapolis v. Edmond, 121 S. Ct. 447 (2000). In that case, Petitioners challenged the City of Indianapolis checkpoint program designed for stopping any illegal narcotics as a violation of the 4th Amendment of the U.S. Constitution. The city operated vehicle checkpoints to interdict unlawful drugs, stopping a predetermined number of vehicles, requiring production of license and registration information and then looking for signs of impairment and conducting an open view examination of the vehicle. The U.S. Supreme Court held where the primary purpose of the checkpoint was to merely uncover evidence of ordinary criminal wrongdoing and was used for primarily general crime control and the stops could only be justified by some quantum of individualized suspicion. Accordingly, the checkpoint program violated constitutional law because it was ultimately indistinguishable from the general interest in crime control.

In conclusion, sobriety checkpoints are generally upheld if the guidelines established by the line of cases are adhered to. However, drug checkpoints are generally going to be ruled invalid searches and seizures.