**The goal of this article is to educate those who don’t know their rights when dealing with the police. The concern in the firearms community is when encountering officers (or agencies) that are ignorant of, or hostile to, carry laws who attempt to intimidate or lecture armed citizens. Bad officers preying on those ignorant of their rights can be stopped by citizens politely and knowledgeably asserting their rights.**

**Most cops won’t break the law, but they won’t avail you of your rights unless you actually know and use them. Cops take advantage of the fact people don’t assert their rights and are generally submissive to authority. Know the law and your rights.**

**This article is not what to do or say after a defensive gun use (shooting) or whether or not you should** [**voluntarily inform an officer you’re armed**](http://nevadacarry.blogspot.com/2015/10/should-you-inform-police-officer-that.html) **when detained or pulled over.**

**Record (video or audio) your interaction with the police! Every time and always!**

**Detention vs. Consensual Encounter**

There are two kinds of police encounters: **detentions**, where you are arrested or otherwise prevented from leaving and **consensual encounters**, where you can leave at any time. A detention is also known constitutionally as a [Fourth Amendment](http://www.usconstitution.net/xconst_Am4.html) seizure. An arrest (also a seizure) is also a detention, but a detention is not an arrest. In most cases, an armed citizen is probably going to be pulled over. This is a detention.

While it happens, it’s highly unlikely that in Nevada a legally armed citizen will be approached simply because they are armed. It has happened in the pass and continues to occur from time to time, whether it was on the officer’s own initiative or in response to a call. In this case, an officer approaching you saying something like “I’d like to talk to you about why you’re carrying that gun,” is a consensual encounter. It may be innocuous. A few seconds of conversation can tell a curious officer apart from one who is not thrilled you are openly carrying.

The question to ask yourself in determining the two encounters apart is “Would a reasonable person feel free to leave?” ([*United States v. Mendenhall*](http://www.jaredolen.com/law-school-resources/criminal-procedure/united-states-v-mendenhall/)*).*  Being told to “sit down” or asked “Where are you going?” is fairly unambiguous. Flashing the emergency lights and activating the siren to pull a car over is a detention and all persons in the vehicle would be considered seized. Walking over an asking “Are you carrying a firearm?” is not a detention. Just because a police officer *has* authority does not mean he is *exerting* authority by asking a question.

A detention requires reasonable suspicion of a crime. If you have not been arrested or detained (handcuffed or told you are *not* free to go), then you are not detained you may leave. A traffic stop is a detention until the officer tells you that you may go. If you are stopped on the street, you might ask "Am I being detained?" or "Am I free to go?" An officer might try to evade the question or ignore it entirely, but he will certainly tell you if you *can't* leave. This is a detention.

Police can ‘consensually encounter someone’, in other words, walk up to you and start talking or asking questions. “What's your name?" or "Do you have ID?" is not just friendly conversation. Consensual encounters that started as a friendly conversation can lead to detentions when the officer develops cause. You can probably tell if the officer has ulterior motives when, after saying “Hello,” he starts sniffing to find evidence of drugs, alcohol, or if you bought your gun through [a Bloomberg background check or not](http://www.nevadacarry.org/universal-background-checks.html).

If you think the officer is fishing for something against you, you have every right to ignore them or politely tell them off, but don’t be afraid of a normal conversation with a cop. As you can see in the *Hiibel* case below, while an officer might *suspect* you of something (in this case a domestic violence incident) he must have *reasonable, articulable suspicion* or *probable cause* to make a consensual encounter into something more. For instance, the officer can ask for ID or answers to questions, but you are under no obligation to provide it.

**Silence**

**You have the right to remain silent** ([*Miranda v. Arizona*](https://en.wikipedia.org/wiki/Miranda_v._Arizona)). You must specifically invoke that right by saying so out loud, or your silence can be used against you, (*[Berghuls v. Thompkins](http://www.tdcorg.com/article/?a=64)*). Many say “I don’t answer questions and I do not consent to searches.” Seriously be quiet once you’ve invoked your right except to answer the questions you legally must answer (see below) or to ask for an attorney. If you are or think you may be in trouble, don’t say anything.

**You do not have to identify yourself** (or produce identification) unless the officer has reasonable, articulable suspicion (RAS) that you are committing a crime, (*[Hiibel v. Nevada](https://en.wikipedia.org/wiki/Hiibel_v._Sixth_Judicial_District_Court_of_Nevada)*). The video of this incident can be [viewed on YouTube](https://www.youtube.com/watch?v=APynGWWqD8Y). Pay attention to Mr. Hibel’s answers and also to his attitude versus that of the officer’s.? Case decision aside, remain respectful and polite to de-escalate the situation. Your goal is to beat *both* the ride *and* the rap.

**Search and Seizure**

Simply carrying a firearm, openly or concealed, when and where legal, is not legal grounds for a detention or search without suspicion of a crime, ([*Florida v. J. L.*](https://en.wikipedia.org/wiki/Florida_v._J._L.)). Similar District Court of Appeals cases agree on this point, especially regarding open carry. Under [Nevada law](http://www.leg.state.nv.us/NRS/NRS-202.html#NRS202Sec3667), a **concealed** carry permittee has to answer if they are **carrying concealed** and present their permit only *after being specifically* asked. Nevada has no ‘first duty to inform’ law.

You have **the right to refuse consent to a search** of yourself, your vehicle or home.

“The police are free to approach people to ask them questions, even without reasonable suspicion that the people are violating the law. They can order a person to stop for a short while if they have reasonable suspicion that the person is committing a crime or about to commit a crime. They can certainly disarm him and arrest him if they reasonably think that he’s about to shoot them…. But to coercively stop a person – and certain to handcuff the person – the police do have to have reasonable suspicion. ([Eugene Volokh](https://www.washingtonpost.com/news/volokh-conspiracy/wp/2015/05/13/the-fourth-amendment-and-open-carry-of-guns-where-such-open-carry-is-legal/))”

You may only be searched (pat down), when you have not been arrested, when the officer has reasonable suspicion to believe that you are committing, or have committed, a crime, ([*Terry v. Ohio*](https://en.wikipedia.org/wiki/Terry_v._Ohio)). A police officer *can* pat you down during a traffic stop for officer safety, *(*[*Pennsylvania v. Mimms*](https://en.wikipedia.org/wiki/Pennsylvania_v._Mimms)).

Police may ask for consent to search you (pat down), your bag, your person, or your house. You have the right to refuse and this does not result in reasonable suspicion or probable cause, ([*United States v. Fuentes*](http://openjurist.org/105/f3d/487/united-states-v-fuentes)). Police are not required to tell you that you have the right to refuse a consent (*[Schneckloth v. Bustamonte](https://supreme.justia.com/cases/federal/us/412/218/)*), but an officer implying they will search or get a warrant anyway can be interpreted as coercion.

Some consent to searches because:

* They mistakenly believe they are required to;
* They accepted rides and candy from strangers as children;
* They like cops and don’t want to make the officer’s job harder;
* They just want to leave and they think this will make things go easier;
* They don’t want to anger the officer and get a ticket;
* They think the officer won’t find anything illegal (whether it’s there or not).

Even if the officer will search anyway, it is in your best interest to refuse, because if contraband or evidence is discovered, and the officer did not have probable cause, the evidence may be thrown out as inadmissible. Don’t participate in a ‘fishing expedition’ with either your answers or your consent. Consent to a search is *never* in your best interest, despite any promises made.

You have the right to a lawyer present during questioning and to consult with one after being arrested. You must unambiguously request an attorney, (*Davis v. United States*). This would include a public defender, if you cannot afford your own attorney (*Miranda v. Arizona,* [*Gideon v. Wainwright*](http://www.uscourts.gov/educational-resources/educational-activities/facts-and-case-summary-gideon-v-wainwright)).

**Traffic Stops**

Being ordered out of the vehicle and patted down during a traffic stop without any particular suspicion of a crime related to a firearm, as long as the reason for the traffic stop is legal, ([*Pennsylvania v. Mimms*](https://supreme.justia.com/cases/federal/us/434/106/case.html)). Interestingly, unlike *Terry*, where a robbery usually involves a weapon, this case’s detention was based upon expired registration. This is where the oft-cited ‘officer safety’ comes in.

A warrant to search a vehicle (i.e. at a traffic stop) when he has probable cause to believe there is contraband or evidence inside. In [*Carroll v. United States*](https://en.wikipedia.org/wiki/Carroll_v._United_States)the Supreme Court held that since cars are so easily moved, obtaining a warrant would be impractical and pointless if the officer had probable cause. The Federal Law Enforcement Training Center produced [this bulletin on warrantless vehicle searches](https://www.fletc.gov/sites/default/files/imported_files/training/programs/legal-division/downloads-articles-and-faqs/research-by-subject/4th-amendment/searchingavehicle-consent.pdf).

Police can allow searches of glove boxes, center consoles, etc. as an extension of a ‘protective sweep’ of *Terry* pat down search based upon reasonable suspicion of a crime ([*Michigan v. Long*](https://supreme.justia.com/cases/federal/us/463/1032/case.html)*)*. Note that in this case, the defendant was visibly under the influence and a plainly visible hunting knife lead to the concern for additional weapons inside the vehicle.

In Nevada, a plainly visible firearm inside a vehicle [*is not* considered to be concealed](http://www.leg.state.nv.us/NRS/NRS-202.html#NRS202Sec3653) if you can plainly see that the object is a firearm. See this [attorney general’s opinion](http://www.nevadacarry.org/uploads/5/4/2/6/54262223/ag_concealed.pdf).

**Running Serial Numbers**

It is not (yet) considered an illegal search to run a serial number of a firearm when an officer takes a firearm during a traffic stop for officer safety. Many gun owners have stories of officers doing this to determine if the gun is stolen or in days past, if the gun was registered properly in Clark County. It’s not right, but it’s not unconstitutional (yet). There really isn’t much case law in this area because legal gun owners tend *not* to generate a case, like getting arrested, which creates a problem.

Remember, in Clark County, handgun registration ([blue cards](http://www.nevadacarry.org/blue-cards.html)) is no longer required and the records destroyed, therefore it is impossible for a handgun to be registered in the state of Nevada.

In [*Arizona v. Hicks*](https://en.wikipedia.org/wiki/Arizona_v._Hicks), the court found that manipulating a suspected stolen piece of stereo equipment inside a home to make the serial number visible to be run later was an unconstitutional search. However, this was inside a home and the officer had to physically move the object. A serial number would have to be [in plain view](https://en.wikipedia.org/wiki/Plain_view_doctrine) ([*Horton v. California*](https://en.wikipedia.org/wiki/Horton_v._California)) for him to be able to freely run the number *sans* warrant.

Now an officer can legally seize a firearm for ‘officer safety.’ It is more a less given that he will see the serial number by innocently manipulating the weapon. This allows him to meet the plain view doctrine (see above). The officer can also deliberately look at the serial number and run it and still be well inside case law. The unasked question remains: Is it constitutional for the officer to ‘examine’ the serial number and run it at this point? Courts have not determined this to be an illegal search yet.

If an officer picked up a random piece of stereo equipment in your front seat and ran the serial number without probable cause, that likely would be found to be an unconstitutional search. Why the difference? Well, case law has found that an officer can temporarily seize or search for a firearm based on ‘officer safety,’ but there is no such issue with a non-weapon. Two, nothing *specifically* says he can’t run the serial number as it becomes visible to him (regardless of how). With the stereo example, the officer couldn’t touch/run it unless he had probable cause it was stolen or the serial number was facing up (in plain view). He has the right to possess the firearm, but not the stereo, without cause.

All things being equal, without probable cause that the weapon is stolen, an officer *cannot* run a serial number of a gun; he has no reason and he has no right. *However*, without case law prohibiting this, officers can get away with it because nothing says they shall not. If one presumably was arrested (say they bought the gun in a private sale without knowing it was stolen), the case might be challenged successfully on the grounds that officer safety ≠ need to run serials. So at this time: they *can* do it, but they really *shouldn’t*. You should file a complaint against the officer if this happens.

Should police be taking firearms from citizens during detentions for traffic violations or other minor infractions *without* reasonable, articulable suspicion of potential violence? Absolutely no. Can they do it? Under current law/rulings, yes.

**Police-Citizen Interactions**

Many armed citizens have a fundamental lack of trust of police due to abuses, bad encounters with officers who were suspicious of an armed citizen/unsafe, or because they dislike police generally. While healthy skepticism of authorities is an American trait, invoking your rights doesn’t entitle you to be disrespectful to police or hateful of cops because they write you tickets.

Some officers will get nervous seeing a gun or knowing one has been injected into the situation. Some departments or individual officers have been infused with the perception that an armed citizen is just as bad as an armed criminal. Recent history in Nevada has made negative police reactions to open carry in particular largely a thing of the past. Many cops are even supportive.

There are [different opinions](http://nevadacarry.blogspot.com/2015/10/should-you-inform-police-officer-that.html) on volunteering to the officer that you are armed. Those who do so as a practice recommend not using 'gun', as it is a loaded word that usually indicates the weapon is a threat, but say 'firearm' or 'pistol' instead. Remember, as a permittee [you are required](http://www.leg.state.nv.us/NRS/NRS-202.html#NRS202Sec3667) to tell an officer if you are carrying a concealed weapon on your body (or carried) *only if asked*. If the officer is aware that you are armed, follow their instructions explicitly, inform them of where your gun is and any movements (such as reaching for your wallet), and don't make furtive movements.

Cooperate with requests that are legal and reasonable, such as answering truthfully if you are carrying a concealed firearm and presenting your permit. Being antagonistic will only annoy the officer and further drag things out. Use your judgement in talking to the officer; you are a social creature and you can tell if you are being setup to talk your way into handcuffs or if falling on your sword is called for to avoid that ticket. For most legal gun owners, you’re not going to be in trouble. If all else fails or the potential charges are serious, then shut up.

Remain calm, polite, and respectful. Gun owners and liberty minded individuals sometimes constitute regular police work as harassment. In most cases, it's not. Do yourself a favor; follow the golden rule and you might get to drive away without a ticket. Not rolling down your window all the way and being an ass is a perfect way to extend your detention and talk yourself into a ticket. Laugh, be normal, and try and create a rapport with the officer. Politely ask why you were stopped if the officer doesn't say so. If the officer is trying to get you to admit to something you don't want to, politely say something to the effect of "I don't answer questions or consent to searches."

Police One [has an article](https://www.policeone.com/police-products/firearms/articles/2144601-Dealing-with-citizens-legally-carrying-a-concealed-weapon/) explaining the police perspective (positively) on dealing with armed citizens and how an officer can and should differentiate the legally armed from criminals without lumping everyone together.

**Police Complaints**

If you believe the officer did something illegal or unreasonable, was rude (not just stern), or exceeded their authority, file a complaint immediately. Ask for the officer's name and badge/identification number. Call the watch commander/supervisor and file a written complaint. Problem officers or bad policies are not corrected if no one says anything to the department. Bitching on the internet changes nothing; call BS on the officer to his superiors. Contact the city/county/state elected representatives.

**Conclusion**

Case law can get rather digress and go into interesting details that can get to a rather abstruse level. This is not meant to be comprehensive, but to illuminate what police can *legally* do and what your *rights* are. Don’t be afraid to assert yourself; this goes for cops, the library district, and loudmouths in general. Do not be intimidated or let bad cops get away with treating legal gun owners like criminals. If your rights are violated, file a complaint, don’t just grumble to your friends. Abuses must be corrected.

**Any comments amounting to “fight/shoot the police” or “F--- the police” will be deleted.**