

## **AVOIDING PROSECUTION IN CITIES AND COUNTIES WITH MANDATORY LOCKED-STORAGE REQUIREMENTS AND THEFT/LOSS REPORTING REQUIREMENTS**

Anti-gun forces have been attempting to push their failed state legislation at the local level for many years. Among these proposals are requirements that gun owners report the loss or theft of a firearm within a certain amount of time (usually 48 hours) and that all firearms be stored in a locked container in one's home. Several jurisdictions have already enacted similar restrictions, including San Francisco, Los Angeles, Oakland, Sunnyvale, Sacramento, Santa Cruz, and Tiburon. And recently, anti-gun forces have been lobbying both Palm Springs and San Jose to do the same.

In July, Governor Brown vetoed Senate Bill 894, which would have required all Californian gun owners to report the loss or theft of a firearm within 5 days. But Lt. Governor Gavin Newsom's Proposition 63 (the so-called "Safety for All Act"), which will be on the ballot for the November general election, includes an identical provision. To learn more about this ill-conceived proposition, visit the Coalition for Civil Liberties website at [www.stoptheammograb.com](http://www.stoptheammograb.com).

In the meantime, we wanted to take the time to educate gun owners on what they need to know in order to avoid prosecution and to assert their rights, or should they find themselves in any of the jurisdictions that already have mandatory theft/loss reporting or locked-storage requirements.

### **I. What All Law-Abiding Gun Owners Need to Know**

Residents and those traveling through the cities or counties with mandatory locked-storage requirements should be prepared in the event police pull you over or show up at your home and question you about the way you store your firearms or ammunition in your home or car. Typically,

police ask questions about whether there are any firearms in your home or car, how they are stored, and who has access to them.

Even without probable cause or a search warrant, police officers are trained to get you to make incriminating statements or admissions that will give them grounds for a warrant or a search. To learn more about this police practice, read [\*Protect Yourself! California's Politicized Gun Confiscation Program Threatens Uninformed Gun Owners\*](#).<sup>1</sup> In Section V of *Protect Yourself!*, the firearms law attorneys at Michel & Associates explain how the police utilize “knock and talks” to try to get incriminating information from uninformed gun owners.

If the police knock on your door, try not to talk to them! Unless they have a search warrant, try not to even open the door. Instead, tell the officer that you assert your right to remain silent and want to have an attorney present (actually say those words).<sup>2</sup>

When interacting with law enforcement, keep the following in mind.

1. Do *not* “consent” to a search of your person, possessions, car or home. Insist on a search warrant. If they don’t have a warrant, refuse the search entirely and close the door.
2. If they have a search warrant, let them in, stand back and say nothing except that you want to call your lawyer.

---

<sup>1</sup> This memorandum is available at: <http://www.calgunlaws.com/wp-content/uploads/2012/08/Protect-Yourself1.pdf>.

<sup>2</sup> The attorneys at Michel & Associates have developed a flyer that you can hand to the police in order to assert and protect your constitutional rights. This flyer can be found at: <http://www.calgunlaws.com/wp-content/uploads/2013/07/APPS-Notice.pdf>.

3. Consult a lawyer immediately. Ask to make a phone call for this purpose.<sup>3</sup>

## **II. Fourth Amendment Rights**

### **A. What Is the Fourth Amendment?**

The Fourth Amendment to the United States Constitution states that “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.”

### **B. What the Fourth Amendment Means for You: You Have a Right To Be Free From Unwarranted Unreasonable Searches and Seizures by Law Enforcement!**

Every citizen is entitled to be free from illegal searches or seizures conducted by law enforcement. Should law enforcement exceed their authority, any evidence collected by them against you will be excluded by a court at trial. This is what is known as the exclusionary rule of criminal procedure. Any arrest must be based on probable cause, but a warrant for an arrest is only required if the person arrested is in their home.

#### **i. What This Means When Traveling With Firearms**

What does this mean for you? When traveling with firearms, don't draw attention to the fact that you are doing so. Travel with your guns unloaded and in a locked container that conceals the firearm from view, preferably in the trunk. The container should not have any markings that identify its contents. Also keep in mind that if an officer asks you whether you have any firearms

---

<sup>3</sup> For more information and materials on protecting and asserting your Fourth and Fifth Amendment rights, visit <http://michellawyers.com/reference-materials/criminal-law-references/>

in your vehicle, you do not have to respond. This will be explained in more detail in the next section.

## **ii. Automobiles**

Generally, law enforcement only need probable cause (as opposed to a warrant) to search an automobile because, in theory, the mobility of a car makes it impractical for police to secure a warrant. If a police officer has such probable cause, they are allowed to search the entire car and all of the contents (including boxes, bags, and other containers) of the car that could reasonably contain the item that they have probable cause to search for. During the course of a traffic stop, probable cause may arise for the law enforcement officer to search the car (*e.g.*, if the officer sees or smells drugs in the car).

Typically, when an officer pulls someone over while driving, probable cause to search the vehicle does not yet exist. The detention itself is called a “Terry Stop,” which is discussed in greater detail below.

## **iii. Items in Plain View**

As discussed above, if an item is in plain view to the law enforcement officer and the officer has a legal right to be in the place where the item is seen, and the item is immediately apparent to the officer to be contraband (*e.g.*, an unlawful weapon), an exception to the requirement of having a warrant is recognized by the courts.

## **iv. Consent to Search Is Given**

If a person consents to a law enforcement officer searching their belongings, and does so voluntarily knowing that they are giving permission to search, then the warrant requirement is waived. This is why many officers attempt to convince or lure individuals into granting consent to

search. By law, you are not required to consent, and you should never give your consent. Always remember that if a law enforcement officer asks for something or asks to do something, such as to open or search your personal property, they do not have the authority to make you do it!

A person who has consented to a search, however, can withdraw their consent by making an unequivocal statement to the law enforcement officer that they are withdrawing their consent. If consent is revoked, the officer performing the search is required to stop searching.

**v. Stop and Frisk (Also Known as “Terry Stops”)**

A “Terry Stop” is a lawful detention of an individual. Usually, such stops are to give an individual a ticket for speeding when driving, or in some cases to “pat down” and check for firearms when the officer reasonably believes the person is armed and dangerous. Such “pat downs” have been the focus of much debate in New York, but remember that an officer can conduct a pat down on any driver they believe is armed. This means that when you are traveling with a firearm, as discussed above, always do so in a lawful manner and always keep them unloaded in a locked container that conceals them from view (preferably also in a trunk).

**vi. Inventory Searches**

Whenever a person is arrested and their vehicle is taken into custody, officers may search the arrestee’s personal belongings and the entire vehicle, including closed containers within the vehicle, even if locked. If arrested at a residence, officers may only search the immediate vicinity of the arrestee, unless they obtain a warrant to search the entire premises.

Remember, that you are *never* required to aid law enforcement in searching your belongings. Never give them a combination or key to containers in your possession, unless they have a warrant. If they have to ask, they don’t have authority to make you do it! Always remain

calm and know that if your property is damaged and the officers did not have authority to search, you will be entitled to damages caused to your property.

### **III. Fifth Amendment Rights**

#### **A. What Is the Fifth Amendment?**

The Fifth Amendment to the United States Constitution states that “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 subjected 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.”

#### **B. What the Fifth Amendment Means for You: You Have a Right to Remain Silent!**

Every individual has a right to be free from making self-incriminating statements that get them in trouble with the law. This is usually personified in an individual’s right to remain silent during interactions with law enforcement.

#### **C. Right to Remain Silent**

You should never feel the need to answer any questions from law enforcement officers. Should you be contacted, it is best to simply state that “I wish to speak to my attorney before making any comments or statements.” Do so calmly and politely but be firm in your stance. Law enforcement’s goal is never to help you; it is to investigate crime. If they are not required to help you, don’t help them by answering any of their questions. Period!

Also keep in mind that law enforcement officers are not required to read you your *Miranda* rights before taking you into custody. Therefore, your rights may or may not be read to you if you are arrested. Nonetheless, when your *Miranda* rights are read to you, ***always*** invoke your right to remain silent!

## **1. Federal Agents**

It is important to understand: do not lie to federal agents; such as, the FBI, ATF, or DEA. When interacting with these agents, always ask to speak to an attorney before making any statements, regardless of how basic the questions may be. Never assert your innocence or lack of guilt as you may be unaware of technical violations of the law you may have committed. Furthermore, always assume that you are speaking to a federal agent as a matter of principal, even if you know the officer is from a local agency.

### **D. Other Fifth Amendment Protections**

The Fifth Amendment also gives individuals other protections such as Due Process of Law and protections against unlawful takings (repossession of land or property without fair compensation) by the government. Should you have any questions regarding your rights as an individual or if you are in need of immediate legal assistance, contact an attorney.

## **IV. Frequently Asked Questions**

### **A. Where Can I Go Should I Need to Contact an Attorney?**

Should you be contacted by law enforcement, or have questions regarding the law or your rights as an individual, feel free to submit a free case evaluation request to Michel and Associates, P.C., at: [helpdesk@michellawyers.com](mailto:helpdesk@michellawyers.com).

## **B. How Should I Travel With My Firearms?**

When traveling with firearms, don't draw attention to the fact that you are doing so. Travel with your firearms unloaded and in a locked container that conceals the firearm from view, preferably in the trunk of your vehicle. The container should not have any markings that identify its contents. Also keep in mind that if an officer asks you whether you have any firearms in your vehicle, you do not have to respond.

### **Help Us Help You**

Please help us fight for your right to choose to own a gun for sport, or to defend yourself and your family. [CRPA](#) and [NRA](#) work together in California to fight for you in Sacramento, in cities and counties across the state, in regulatory agencies, and in the courts. Even with the generous rates that our team of civil rights attorneys, legislative advocates, experts and consultants grant us, these ongoing efforts are still expensive. You can support our pro-Second Amendment efforts in California by donating to the [California Rifle & Pistol Association Foundation](#) (CRPAF). CRPAF is a 501(c)(3), so [contributions](#) to CRPAF are tax-deductible. Or donate to [NRA Legal Action Project](#). All donations will be spent to specifically benefit California gun owners.

Second Amendment supporters should be careful about supporting litigation or other efforts promised by other individuals and groups that lack the experience, resources, skill, or legal talent to be successful. The NRA and CRPA national team of highly regarded civil rights attorneys, legislative advocates, and scholars has the experience, resources, skill and expertise needed to maximize the potential for victory in California's often hostile political environments.

For a summary of some of the many actions the NRA and CRPA has taken on behalf of California gun owners, including the *Peruta* case, click [here](#).