



## Issue Brief: Sobriety Checkpoints

### Issue Brief 6 Sobriety Checkpoints (June 2015)

This Brief was produced by the Traffic Resource Center for Judges, an initiative of the National Center for State Courts (NCSC). The Traffic Resource Center is a cooperative effort between the Department of Transportation and the National Center for State Courts (NCSC) to establish a resource for judges, court administrators, court clerks, and other court staff on issues related to traffic adjudication.



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In *Michigan Dep't of State Police v. Sitz*, 496 U.S. 444 (1990), the Supreme Court upheld the constitutionality of a Michigan sobriety checkpoint program. The Court cited *Brown v. Texas*, 443 U.S. 47 (1979) and *United States v. Martinez-Fuerte*, 428 U.S. 543 (1976) as its controlling precedent. The Court adapted the *Brown* “reasonableness” factors to deal with sobriety checkpoints and said that “the balance of the State's interest in preventing drunken driving, the extent to which this system can reasonably be said to advance that interest, and the degree of intrusion upon individual motorists” supported the constitutionality of the roadblocks. *Sitz*, 496 U.S. at 455. The Court divided its consideration of the intrusion upon individual motorists and considered both the time intrusion and any apprehension the checkpoints might have caused, and it decided that the imposition upon motorists was slight and easily outweighed by the state's interest in preventing the



“slaughter” on roadways. *Id.* at 451 (quoting *Breithaupt v. Abram*, 352 U.S. 432, 439 (1957)). However, the Court also referenced its decision in *Delaware v. Prouse*, 440 U.S. 648 (1979), which forbade random and unstructured stops. Furthermore, Chief Justice Rehnquist noted in the opinion upholding the program’s constitutionality the fact that Michigan publicized the stops before they occurred.

Since the *Sitz* decision was handed down, most states have made controlling determinations on the constitutionality of sobriety checkpoints as controlled by their own laws in addition to the U.S. Constitution and Supreme Court precedent. Thirty-seven states plus Washington, D.C. currently permit sobriety checkpoints. Of these states (and D.C.), thirty-three have upheld the constitutionality of checkpoints through case precedent. Almost all state court cases upholding sobriety roadblocks, even the cases decided before the Supreme Court decided *Sitz*, use a *Brown*-esque balancing test to weigh the invasion of personal liberty against the state interest in protecting its citizens from drunk drivers. These tests, whether justified under federal or state constitutional principles, always come down in favor of the state’s interest in keeping its roads safe. Six states have legalized sobriety checkpoints by statute (Vermont has used both case law and legislation to uphold them).

A minority of jurisdictions does not permit or address sobriety checkpoints. Eleven states have prohibited sobriety checkpoints altogether. Eight states have found them to be unconstitutional under state constitutional principles; four states have statutorily prohibited them (Iowa does both). Some of the states that have struck down sobriety checkpoints have struck them down because there was no express statute permitting them or force of law to justify their existence, suggesting that if such statutes



were eventually passed, the checkpoints might be permissible. Two states—Alaska and South Carolina—have no case law or statute dealing with sobriety checkpoints, although a South Carolina Supreme Court case from 2008 references sobriety checkpoints, suggesting that they might be allowable under South Carolina law.

States That Permit Sobriety Checkpoints By Court Decision	(32 states + D.C.) Alabama, Arizona, Arkansas, Colorado, Connecticut, Delaware, District of Columbia, Florida, Georgia, Hawaii, Illinois, Indiana, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Mississippi, Missouri, Nebraska, New Jersey, New Mexico, New York, North Dakota, Ohio, Oklahoma, Pennsylvania, South Dakota, Tennessee, Vermont, Virginia, West Virginia
States That Permit Sobriety Checkpoints By Statute	(6 states) California, Nevada, New Hampshire, North Carolina, Utah, Vermont
States That Prohibit Sobriety Checkpoints By Court Decision	(8 states) Idaho, Iowa, Michigan, Minnesota, Oregon, Rhode Island, Texas, Washington
States That Prohibit Sobriety Checkpoints By Statute	(4 states) Iowa, Montana, Wisconsin, Wyoming
States Which Have No Law Applicable To Sobriety Checkpoints	(2 states) Alaska, South Carolina

For more detailed information see the accompanying spreadsheet.

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