

Proposed testimony of Joseph Sastre of Bristol, Connecticut regarding House Bill 5408
Hearing to be held 3/3/2016

There are seven exceptions to the Fourth Amendment warrant requirement. Except where a circumstance falls within one of these seven exceptions a person cannot be searched or seized by the police.

The seven exceptions are as follows:

- Seizures effecting felony arrests in public places.
- Searches incident to lawful arrests.
- Searches conducted in accordance with the Automobile Exception.
- Seizures based on reasonable and articulable suspicion of criminal activity, which is where the authority for the current law exists.
- Cases of exigent circumstances.
- Seizures conducted at lawful roadside checkpoint stops, such as at DUI checkpoints.
- And the good faith requirement which has to do with searches performed incident to defective warrants where the law enforcement officer had a good faith belief that the warrant wasn't defective.

The legislature cannot create additional warrant exceptions. The proposed amendment to the statute is illegal because it is an attempt to do just that. It gives investigatory seizure and search authority to law enforcement officers outside of any of the seven recognized exceptions. The legislature simply cannot give away citizens' rights.

There is no evidence that there is a serious problem in Connecticut relating to the open carrying of firearms and therefore no rational basis can be offered for legislating away a civil liberty to give law enforcement officers a statutory means to circumvent the Fourth Amendment. Since there is no identifiable problem, and because any change to the current law will subject it to scrutiny in the courts costing the state time and money and since the change, if enacted, will not pass muster when it is challenged in the courts, the legislature owes it to the people of the State of Connecticut to strike the bill and put its time and effort into measures that *will have* a benefit to the state.

The statute, as it stands, states that a person carrying a sidearm may be required to produce his permit to carry a handgun when he is seized by the police under reasonable suspicion that he is engaged in some sort of criminal activity. This is merely a recital of Terry v. Ohio, a case that went before the United States Supreme Court in 1967. This, by the way, is the trouble with codifying case law. It gives people the idea that it can just be changed by further legislation. In any case in Terry the right of a law enforcement officer to stop and frisk a suspect about whom the officer held a reasonable suspicion of engaging in criminal activity was based on the compelling need of police officers to protect himself from unknown danger, specifically, concealed weapons *when interacting with a person he suspects is engaging in a crime*. That's the law, as it stands.

The right to frisk was never intended, and this point was specifically articulated by the Supreme Court in the majority opinion in Terry v. Ohio, to give police the right to conduct *investigatory searches* at this initial confrontation stage. That means the police aren't entitled to search a suspect for drugs, only to make sure he isn't armed so they don't get shot or stabbed while they are trying to figure out if criminal activity really is afoot or not. But what our legislature wants to do now is give the police

investigatory search authority- with no warrant- where an arrest hasn't even been contemplated- and where there is no reasonable suspicion that a crime is afoot.

Since Connecticut's laws allow the open carrying of firearms and there has been offered no identified problem with folks who openly carry their firearms breaking the law, giving the police warrant-less, suspicion-less authority to conduct investigatory searches of people who openly carry their firearms would be no different than allowing the police to pull any driver over to the side of the road, no matter if they are obeying the traffic laws or not, just because the officer can see them driving a car, and for the officer to command the driver to whip out his driver's license, *just to make sure he has one*.

In my opinion, only two possible basis for this law can reasonably be inferred from the proposed bill.

First is that the legislature simply wants to outlaw the open carrying of firearms by subjecting citizens wishing to engage in the act to constant state-sanctioned harassment. If that's what the legislature wants to do, then it ought to simply put forth a bill outlawing open carry and see what happens. But this sneaking, dishonest effort to use the police to enforce laws that the legislature doesn't have the gall to pass outright shouldn't be tolerated and if passed the police should refuse to be used as pawns in this way by refusing to engage in wholesale harassment.

The second inferential basis for this bill would be to legalize an illegal practice that the police in this state perpetrate with remarkable frequency and in doing so open the state and local governments up to liability in the civil courts. That is, the suspicion-less seizing and searching of lawful gun owners who the police just happen not to like. Two such examples are Michael Picard, a DUI checkpoint activist whose unlawful search and seizure by the Connecticut State Police was caught on video in September of last year and Dontrell Brown, a colorful, well-known and law abiding character in Bridgeport whose seizure by the Bridgeport Police was caught on video in January of this year. How do I know these men are law abiding? Because they both have valid pistol permits! In both of cases the police knew who they were dealing with and made a conscious decision *or else followed an irresistible impulse* to mistreat these men. In both cases the police blamed their misconduct on the mens' exposed firearms, but in reality, they they just didn't like them and wanted to give them a hard time.

Passing a bill for such a self-serving reason as to insulate the state and local governments from liability for the unlawful acts the police forces they are incapable of effectively training, or at least *controlling*, would be no different than legalizing robbery to save a certain politician's son the embarrassment of arrest every time he is accused of robbery.

Those are my thoughts and I thank the legislature for its consideration.