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CHALLENGING

MASSACHUSETTS

OUI ROADBLOCKS

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Chapter 1: What is a DUI roadblock in Massachusetts?

A drunk driving roadblock in Massachusetts is when the police block off an area of the road to check every car coming by the roadblock to ensure that the motorist is not under the influence of alcohol. The Massachusetts State Police conducts DUI roadblocks or sobriety checkpoint randomly throughout the year in different locations in order to deter drunk driving. Typically, a DUI roadblock will occur on the weekends and will be run by the state police in conjunction with the local police. A DUI roadblock will generally be from 11:00 pm to 3:00 am.

Police officers will acknowledge that DUI roadblocks are not extremely effective in deterring drunk driving given they target a small area. Police officers will testify that putting additional police officers on the road is probably a more effective way of deterring drunk driving than a roadblock. However, the police still continue to use these DUI roadblocks as they feel the roadblocks educate the public and demonstrate the seriousness and the level of enforcement that the police will go to enforce Massachusetts drunk driving laws.

In some states DUI roadblocks are unconstitutional as State Supreme Courts violates the state constitution. Because a roadblock is a seizure without any justification, courts that held that the government does not have a compelling interest

under their state constitution to seize an individual without probable cause or reasonable suspicion. The United States Supreme Court has held that a roadblock is Constitutional under the 4th amendment. This was decided by the United States Supreme Court in the case of Michigan Dept. of State Police v. Sitz, 496 U.S. 444 (1990). Sometimes DUI roadblocks are also referred to as sobriety checkpoints. These terms are interchangeable and mean the same thing; the police are conducting a checkpoint at a designated area designed to detect suspected drunk drivers.

Chapter 2: How must a Massachusetts DUI roadblock be set up?

When the police conduct a Massachusetts DUI roadblock, they are required by Massachusetts DUI law and specifically the case of Commonwealth v. McGeoghegan, 389 Mass. 137 (1983) to set up the roadblock according to a plan set forth by the Massachusetts State Police. This plan details numerous components including site selection. The state police plan must specify how and why the police decided to conduct a roadblock at this particular area. Accordingly, a Massachusetts DUI lawyer will be provided statistics regarding the number of DUI related accidents in the area where the roadblock was conducted.

Another requirement is that the roadblock must be conducted so that it can be done in a safe manner. When roadblocks are conducted, generally they are conducted in an area where it is well lit, it is easy for motorists to see that a roadblock is being conducted ahead, and is an area where the police can pull motorist over and have them safely go into a screening area for further testing, such as field sobriety tests. Generally, the area that a roadblock will be conducted will be in the area where there is a very large parking lot allowing for a motorist to pull in at the direction of the state police for further testing. Roadblocks are never done on any

major highway because they cannot be performed safely as required under the law.

Additionally, the Massachusetts state police plan will specify safety criteria requiring that there should be sufficient road flares, reflectors and cones to direct the flow of traffic, street lights to illuminate the area of the checkpoint, officers in uniform with reflective belts and high visibility clothing. Further, officers will have to be positioned where they can be easily seen so that they can give visual commands to start and stop. The police are required to use marked cruisers and have high visibility emergency warning devices. In conducting a Massachusetts DUI roadblock, advanced notification is also required to ensure that the public has notice of the intent to do a roadblock. While the police do not have to specify the area of the roadblock, the police are required to put forth press releases and public notices that a roadblock will be conducted. The roadblock must conform to the details set forth in the State police plan, which is referred to as TR-15 in Court. In every roadblock motion in court, the issue will be whether the police complied with the directive of the State police plan as set forth in TR-15.

A Massachusetts DUI roadblock requires the police to have an officer in charge. This officer in charge is necessary to ensure that the roadblock is conducted according to the state

police plan and that after the roadblock is completed that all data is forwarded in a timely manner and that this information is kept as part of the state police plan.

Other officers that are involved in a roadblock: When a motorist initially approaches a DUI roadblock, the motorist will be stopped by an initial screening officer. This officer will determine whether there is reasonable suspicion to believe that the motorist is driving under the influence of alcohol. The officer will be looking for signs such as blood shot and glassy eyes, slurred speech, odor of alcohol or any open containers of alcohol in the vehicle to make this determination. The officer is not supposed to ask the motorist about alcohol consumption unless there are other signs of the motorist being under the influence of alcohol. Questions regarding alcohol consumption are supposed to be asked in the screening area and not by the initial screening officer. If the officer does not see any signs that the motorist is under the influence of alcohol, the motorist should be allowed to pass through the DUI roadblock. If there are indications, then the motorist is directed to a further screening area. In many cases an officer will let the motorist drive into the screening area. The motorist will then be asked to perform field sobriety tests such as one leg stand walk and turn and may be asked to recite the alphabet. The state police plan generally requires that the final field

sobriety test be a preliminary breathalyzer test. The motorist will then be asked to take a breathalyzer test in a mobile Bat Mobile which is the breathalyzer test that the police will attempt to introduce in court.

Chapter 3: What are the defenses to a Massachusetts DUI arrest at a roadblock?

One of the primary defenses of a Massachusetts DUI roadblock is to challenge whether the roadblock complied with the Massachusetts constitution. Under the case of Commonwealth v. Anderson, 406 Mass. 343 (1989), the Commonwealth has the burden of proving that the state police complied strictly with the state police plan in setting up the roadblock. Typically challenges to a DUI roadblock involve the following;

- Arguing that the police officer did not have reasonable suspicion to direct the defendant from the flow of traffic;
- Arguing that the police failed to comply with the state police plan in setting up the roadblock; there are numerous technical requirements to be met and this requires testimony on each of the elements by the Commonwealth.
- A failure for the government to submit testimony on these elements could result in a judge finding the roadblock did not comply with the state police plan.
- Challenging whether the police conducted the roadblock in an area where there is a high number of DUI arrests and accidents to justify the selection of the site.
- Contesting whether the initial screening officer asked appropriate questions in greeting you and had reasonable suspicion to direct you from the flow of traffic.

The procedure to challenge a DUI roadblock is to file a motion to suppress. This motion to suppress will then require the Commonwealth to call several witnesses to prove that the roadblock was conducted in a constitutional manner. Often these hearings can be very lengthy as the Commonwealth has to submit documentary evidence and elicit testimony from sometimes two or

three witnesses. The benefit of a motion to suppress a roadblock is that even if the motion is denied often there will be testimony favorable that will help a defendant at the time of trial. This motion hearing will result in the creation of a transcript which will essentially be a book of the officer's observations of the motorist and will provide an indication of how the officer will testify at the time of trial.

Chapter 4: Why Massachusetts DUI roadblock cases are often winnable at trial.

A Massachusetts drunk driving arrest at a roadblock is often winnable at trial for several reasons. First, there is no evidence of erratic driving, generally. Because a motorist drives normally into the roadblock area in most cases, the government does not have a strong piece of evidence, erratic unsafe driving which shows that the motorists ability to operate a motor vehicle is impaired. Without this evidence the government is at a serious disadvantage. Second, in most cases a motorist is allowed to drive into the screening area. This shows further that the officer's initial observations were not that significant; that the officer did not believe that the motorist was so impaired that the motorist could not continue to drive safely into a roadblock area where other civilians and police officer's safety may be at jeopardy. Third, these cases typically come down to field sobriety tests. Often field sobriety tests can be challenged as being unfairly given, lacking reliability and not demonstrating that someone is under the influence of alcohol. Given the lack of evidence of erratic driving, an arrest at a DUI roadblock is a difficult case for the government to meet its heavy burden of proving that the charge satisfies the burden of proof beyond a reasonable doubt.

Often for most the best course of action is to take these cases to trial and fight the case with both the motion to suppress and through a trial before a judge or a jury.

Chapter 5: What are some of the Court cases that created Massachusetts drunk driving laws relating to roadblocks

In this chapter, I would like to explain some of the case law in Massachusetts pertaining to roadblocks. Drunk Driving Laws in Massachusetts come from two sources, statutes, which are enacted by the legislature and Court decision, where the Court interprets both the meaning of laws enacted by the legislature and the Constitution of the United States and Massachusetts to decide what limitation are placed on the authority of police officers.

Massachusetts OUI Roadblock case law generally addresses two types of cases:

1. Those challenge the ability of the officer to direct the driver from the follow of traffic.
2. Case challenging whether the police complied with the State police plan in administering the roadblock.

Should your car have been diverted from the follow of traffic:

The case of Commonwealth v. Robert Murphy, was a recent Massachusetts OUI case that addressed the issue of when a police officer can direct a motorist from the flow of traffic. This case involved an OUI Roadblock that was conducted on Quincy

Shore Drive in Quincy, which is an area where the State police frequently conduct Sobriety Checkpoints.

Under Massachusetts OUI law, when conducting a road block, a police officer must do so according to a State police plan. The plan used in Massachusetts is referred to as TR-15. The defense lawyers in the case argued that the plan gave the officers too much discretion by allowing the officers to direct the motorist from the flow of traffic if the officer believed there was reasonable suspicion to conclude that the motorist was driving under the influence of alcohol. Though the court found that the reasonable suspicion standard gives the officer some discretion, the court concluded that a defendant had sufficient ability to challenge an officer that abused his or her discretion through the process of filing a motion to suppress and that the discretion exercised in the roadblock context was no different than other motor vehicle stops.

Though the court found that the State police plan did not provide too much discretion to direct cars from the flow of traffic, the Court remanded the case to the Quincy District Court to determine whether the State police complied with the State police plan in conducting the roadblock.

- Compliance with the State police plan in administering a Roadblock

Another Massachusetts Supreme Judicial Court that addressed the standard in DUI Roadblock cases was Commonwealth v. Anderson, 406 Mass. 343 (1989). In this case, the Court found that the State police did not comply with the State police plan when the roadblock was extended beyond the time permitted in the plan. As a Massachusetts OUI lawyer defending a roadblock case, this is a very strong case for defense attorneys emphasizing that the highest court of Massachusetts requires strict compliance with the State police plan.

- Massachusetts Court addresses whether Roadblocks violate the Massachusetts Constitution.

The case of Commonwealth v. McGeoghan, 389 Mass. 137 (1983) set forth the standard for determining whether a roadblock complies with Article 12 of the Massachusetts Constitution. This case decided that roadblocks are Constitution provided that:

The vehicles selected to be stopped be selected in a set manner so that it is not arbitrary;

Safety must be assured

- Motorist inconvenience minimized
- And assurance that procedures are being conducted according to a plan devised by supervisory law enforcement personnel.

The Massachusetts Supreme Judicial Court addressed Roadblocks in the case of Commonwealth v. Trumble, 396 Mass. 81 (1985):

The case of Commonwealth v. Trumble, 396 Mass. 81 (1985) addressed whether the guidelines established satisfied the Constitutional standard the court announced two years earlier in McGeoghegan. In Trumble, the Court found that the guidelines used by the State police were in conformity with the directive set forth in prior case law. The guidelines used today mirror those in Trumble leaving the issue of contention for Massachusetts OUI lawyers, whether the police conducted the roadblock in conformity with the guidelines.

This summary of Massachusetts OUI Roadblock law is aimed at helping you better understand the legal issues involved in challenging a roadblock.

Chapter 6: Issues in Roadblock cases across the Country.

This Chapter discusses some issues that have arisen in roadblock cases across the country. As a Massachusetts OUI lawyer, Massachusetts courts will rely on cases from our state. However, when new or novel issues arise, Massachusetts may not have a case addressing the issue and the judge will look to how the issue has been treated in other states. Here is a look at some issues that have been raised by DUI defense lawyers fighting roadblock cases in other states:

One issue that has arisen in other States regarding roadblocks that has not appeared before the Massachusetts SJC or Appeals Court in a published case is whether there is reasonable suspicion for stop a person that appears to be avoiding a DUI roadblock. A case from New York, People v. Rocket, 594 N.Y.S. 568 (1992), held that a legal u-turn did not provide probable cause to stop a motorist. A similar decision was reached by the Oregon Supreme Court. Other state courts have reached different conclusions holding that avoiding a roadblock does provide a basis to stop a motorist.