

Duty to Violate Your Rights



By Paul Engel

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- Does your state have a “duty to inform” law?
- Many point to a violation of the Second Amendment.
- Did you realize these laws violate the Fourth and Fifth Amendments as well?

As a lifelong gun owner, I understand the awesome responsibility of owning a weapon. After getting my concealed carry license many years ago, I came to understand the great responsibility of having a deadly weapon on my person. Now, as a constitutional scholar, I’ve come to realize just how badly states are infringing on our rights, simply because we decide to exercise one of them.

Today, I want to talk about “duty to inform” laws. After all, if the presence of a firearm is a threat to officer safety, than the officer’s firearm is a threat to my safety.

Duty to Inform

In this article “duty to inform” means the legal requirement that a person, when they are contacted by law enforcement, is to inform them that they are armed. Based on my research, currently 47 out of 50 states have some form of “duty to inform” law. Most states have a requirement that you inform law enforcement if you have a firearm only if you are asked. However, thirteen states require you to inform law enforcement of the presence of a firearm even before you are asked. A “duty to inform” law is described by Concealed Nation as:

Duty to Inform laws are crucial regulations that concealed carriers must understand to ensure both their safety and compliance with local statutes during encounters with law enforcement.

[Successful Duty to Inform: Essential Knowledge for Concealed Carriers – Concealed Nation](#)

I'll talk about compliance with local statutes later, but there is some logic in helping to ensure safety both for you and for law enforcement.

The Duty to Inform law exists to maintain a clear line of communication between armed civilians and law enforcement officers. It aims to:

- Enhance officer safety: Knowing that an individual is armed allows officers to adjust their approach to ensure their safety and the safety of others.
- Reduce misunderstandings: By disclosing the presence of a firearm, a concealed carrier can prevent a scenario where an officer might unexpectedly discover the firearm, potentially leading to defensive actions.
- Foster transparency: These laws encourage honesty and openness in interactions between armed citizens and police, fostering an environment of mutual respect and understanding.

[Successful Duty to Inform: Essential Knowledge for Concealed Carriers – Concealed Nation](#)

I do want to enhance safety, but not just for law enforcement, and I'll talk about that more later as well. Yes, the assumption is that all law enforcement is armed, so I can understand them wanting to know if they have a tactical advantage in such a situation or not. But if the idea that an armed citizen is a threat to officer safety, then an armed officer is a threat to citizen safety. After all, if a citizen draws a gun on law enforcement it's a crime, but if an officer

draws their gun on a civilian, it's their job.

Yes, we should want to reduce misunderstandings, but that only works when both sides are open and transparent. Why should the presence of a firearm lead to defensive action only when in the possession of a civilian? Don't civilians have the same right to defend themselves as law enforcement? Do we not have a right, protected by the Constitution of the United States, to be armed? The constitutions of most of our states recognize that all power is inherent in the people. Shouldn't we be able to exercise that power without fear that a government actor has legal protections if they overreact to that fact? If states wish to foster transparency, why do they allow their officers to lie to citizens, then claim it's a crime for citizens to lie to officers. That does not foster transparency, but suspicion.

Laws and Statues

With the law, details matter. Take for example my home state of Tennessee. When I started researching this article I found several websites that claim that Tennessee has a duty to inform law. Well, that's not exactly what I found. As I stated above, like most people, when I hear "duty to inform," I think of a legal requirement to inform law enforcement if you are in possession of a firearm. However, when I dug into the Tennessee law these sites were referring to, I found something different.

The permit holder shall have the permit in the holder's immediate possession at all times when carrying a handgun in a location or manner that would be prohibited if not for the person's status as a concealed handgun carry permit holder and shall display the permit on demand of a law enforcement officer under such circumstances.

[Tenn. Code Ann. § 39-17-1366\(e\)](#)

So the Tennessee Code Annotated that's cited as a "duty to

inform” law, actually only requires a permit holder to display the permit when demanded by law enforcement, and only if they are in a location where they are required to have a permit to be in possession of a firearm. (Tennessee is a permit-less carry state, so in most locations, a permit is not required to carry a firearm.) Under this law, there is no time when a person is required to inform law enforcement that they are actually in possession of a firearm.

There is a more important consideration with these laws: Violations of Constitution of the United States. Sure, there’s the Second Amendment issue, but do these laws violate the Fourth and Fifth Amendment as well?

Unreasonable Search

Most of you are probably aware that the Fourth Amendment protects you against unreasonable searches and seizures, but when are you being searched and when are you being seized? And what makes them reasonable? In *Terry v. Ohio*, the Supreme Court said:

Whenever a police officer accosts an individual and restrains his freedom to walk away, he has “seized” that person within the meaning of the Fourth Amendment.

[Terry v. Ohio, 392 U.S. 1 \(1968\)](#)

So when you are stopped by the police, you have been seized and you are in custody, which requires reasonable suspicion. That means for law enforcement to stop you, they must be able to articulate a reasonable suspicion of your participation in a crime, either past or future.

Under the Fourth Amendment of the U.S. Constitution, a police officer may stop a suspect on the street and frisk him or her without probable cause to arrest, if the police officer has a reasonable suspicion that the person has committed, is committing, or is about to commit a crime and has a reasonable

belief that the person “may be armed and presently dangerous.”

[Terry v. Ohio, 392 U.S. 1 \(1968\)](#)

Does this logic not extend to having to admit that you are armed? If an officer must have a reasonable suspicion of a crime to stop you, shouldn't they need a similar reason to ask if you are armed? And since this is a right protected by the Constitution of the United States, shouldn't the state also be required to show reasonable suspicion before demanding you speak? After all, the law enforcement officer who has stopped you is armed, and by the logic of this case, may be presently dangerous to you. Why should a level playing field between citizen and law enforcement be considered a problem?

Self Witness

If we're going to talk about speaking, we have to include the Fifth Amendment. One of the constitutional protections that I see often misquoted comes from the Fifth Amendment.

nor shall be compelled in any criminal case to be a witness against himself

[U.S. Constitution, Amendment V](#)

Notice, it is your right to not be a witness against yourself, whether it would incriminate you or not. You may not be criminally charged when you encounter law enforcement, but if these laws make it a crime to not inform law enforcement, then that would make it a criminal case. So how can the state require me to witness against myself in what may become a criminal case? The Fifth Amendment protection is not against self-incrimination, but self-witness. If you are required to tell someone you are in possession of a firearm, you are witnessing against yourself, especially if you were carrying concealed. That makes these laws a violation of the Fifth Amendment.

Conclusion

I think I've shown that these "duty to inform" laws violate both the Fourth and Fifth Amendment to the Constitution. Yet each and every day, people are told they have to allow these violations of their rights as a condition of exercising a right protected by the Constitution.

Remember, the Supreme Court believes that, to establish reasonableness to detain and search a person, law enforcement must first be able to articulate a reasonable suspicion of a crime. Searching you for a firearm, even verbally, is unreasonable without such suspicion, and therefore violates your rights protected by the Constitution. It does not matter if your alleged duty requires the officer to ask, without reasonable suspicion, that is a violation of the Fourth Amendment.

Demanding that you witness against your self is a violation of the Fifth Amendment. Again, if law enforcement has a reasonable articulable suspicion that you have or are about to commit a crime, they've established a reasonable search, but your right against self-witness is not based on reasonableness like your right to not be searched.

For these reasons, along with your right to remain silent, I do not see how the state can demand that you identify whether or not you are armed. Even if there are state or local laws that require this violation of the Constitution, you can always point to the Supremacy Clause:

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

[U.S. Constitution, Article VI](#), Clause 2

That said, there are situations where, both for your safety and the safety of other innocent people who may be in proximity, I think it would be a good idea to let law enforcement know that a firearm is present. For example, if you are getting out of a car, or being “patted down” while armed, or if you are reaching for something where a gun is being stored, I think it would be a good idea to inform the officer of the presence of a gun rather than allowing them to discover it for themselves. It’s not that the officer can legally compel you, but for your safety, since you do not know how any specific officer may react to the discovery of a legally possessed firearm.

What I find most concerning is the ongoing attempt by government actors and our elected representatives to create a disparity of power where We the People are expected to be subjects to the governments we created. This ongoing attempt to make law enforcement rulers over the people they have sworn to protect and serve is not only antithetical to the constitutional republic, but to a free people. It is also a violation of federal law:

Whoever, under color of any law, statute, ordinance, regulation, or custom, willfully subjects any person in any State, Territory, Commonwealth, Possession, or District to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States, ... shall be fined under this title or imprisoned not more than one year, or both;

[18 USC §242](#)

That is why I urge you to contact your state representatives and urge them to rescind these “duty to inform” laws. In this country, we are not only to be assumed innocent until proven guilty, but we have the right to both be secure from unreasonable searches and to not be forced to witness against ourselves. Since these rights are protected by the

Constitution of the United States, those laws are already void. Shouldn't those who represent us fulfill their oath to support the Constitution's of both their state and the United States? Shouldn't they do all they can to avoid the confusion that can reduce the safety of officer and citizen alike? Because these laws merely make the citizen a defenseless potential victim of law enforcement hubris.

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