

# Mendez Passenger Control Checklist

**Under state constitutional right to privacy, officer must have articulable rationale predicated upon safety considerations to order passengers out of car or to remain in car following lawful traffic stop.**

**To order passengers to remain in car** – You must have reasonable suspicion that the officer’s safety, the passenger’s safety, or someone else’s safety will be placed at risk if a passenger who is not being independently cited for a seatbelt violation is asked to remain in car during lawful traffic stop. The suspicion required is less than that required for a *Terry* detention.

Articulable factors justifying request:

- |   |   |
|---|---|
| <input type="checkbox"/> hour and lighting conditions   | <input type="checkbox"/> high crime neighborhood  |
| <input type="checkbox"/> weather  | <input type="checkbox"/> hand to hand movement  |
| <input type="checkbox"/> pedestrians restricted from road upon which stop completed                                       | <input type="checkbox"/> number of individuals in car compared to number of officers present at the scene                                 |
| <input type="checkbox"/> age of passenger(s)  | <input type="checkbox"/> statements of passenger or driver  |
| <input type="checkbox"/> personal knowledge of violent tendencies of passenger or that passenger has outstanding warrants | <input type="checkbox"/> purpose of stop (traffic infraction vs. service of arrest warrant or investigation into recently reported crime) |
| <input type="checkbox"/> condition of passenger ( <i>i.e.</i> intoxicated or high)  | <input type="checkbox"/> other  |
| <input type="checkbox"/> arrest of one of the occupants   |   |

**To order passengers to exit car** – You must have reasonable suspicion that the officer’s safety, the passenger’s safety, or someone else’s safety will be placed at risk if the vehicle is not being searched incident to the arrest of an occupant before a passenger who is not being cited for a seatbelt violation is asked to exit a car during lawful traffic stop. The suspicion required is less than that required for a *Terry* detention.

Articulable factors justifying request:

- |   |   |
|---|---|
| <input type="checkbox"/> hour and lighting conditions   | <input type="checkbox"/> high crime neighborhood  |
| <input type="checkbox"/> visible weapons or ammunition  | <input type="checkbox"/> hand to hand movement  |
| <input type="checkbox"/> age of passenger(s)  | <input type="checkbox"/> number of individuals in car compared to number of officers present at the scene                                 |
| <input type="checkbox"/> passenger’s furtive movements  | <input type="checkbox"/> statements of passenger or driver  |
| <input type="checkbox"/> personal knowledge of violent tendencies of passenger or that passenger has outstanding warrants | <input type="checkbox"/> purpose of stop (traffic infraction vs. service of arrest warrant or investigation into recently reported crime) |
| <input type="checkbox"/> passenger’s refusal to keep hands visible  | <input type="checkbox"/> other  |
| <input type="checkbox"/> arrest of one of the occupants   |   |

**To Frisk Passenger for Weapons**– You may frisk outer clothing of passengers for weapons and may search if you reasonably believe you are in danger.

Articulate factors justifying search for weapons:

- |  |   |
|--|---|
| <input type="checkbox"/> high crime neighborhood       | <input type="checkbox"/> CI information                                 |
| <input type="checkbox"/> guns common in neighborhood   | <input type="checkbox"/> information from another occupant              |
| <input type="checkbox"/> feel of weapons               | <input type="checkbox"/> personal knowledge of passenger having weapons |
| <input type="checkbox"/> shape of weapon               | <input type="checkbox"/> passenger's movements                          |
| <input type="checkbox"/> sight of weapon               | <input type="checkbox"/> passenger's statements                         |
| <input type="checkbox"/> sound of weapon               | <input type="checkbox"/> sight of ammunition                            |
| <input type="checkbox"/> concerned citizen information | <input type="checkbox"/> other  |

**To QUESTION** – You may demand the passenger's name, birth date, and address only if a citation is being issued to the passenger. You may detain the passenger for a reasonable period of time to verify his answers and to check for warrants.

If the passenger is not being cited for any infraction, you may ask the passenger's name, birth date, etc.. If the passenger says nothing or tells you to jump in a lake, that's your tough luck; you cannot do anything to the passenger.

If the driver is suspended or being arrested, you have the right to refuse to allow the passenger to drive the vehicle away from the scene of the stop until it is established that the passenger has a valid operator's license.

**BOTTOM LINE – You must be able to articulate reasons for placing restrictions upon individuals who just happen to be in the car that is lawfully stopped.**