OFFICER, AM I UNDER ARREST OR AM I FREE TO LEAVE?
WASHINGTON LAW HOLDS THAT IF I AM NOT FREE TO LEAVE, THEN I AM UNDER ARREST!

Do NOT tell me that I am NOT under "arrest" and that I am merely being "detained" because the word "arrest" is used to define the word "detain" to wit:

"**Detain.** To retain as the possession of personally, **To arrest**, to check, to delay, to hinder, to hold, **or keep in custody**, to retard, **to restrain from proceeding, to stay, to stop.** People v. Smith, 17 Cal.App.2d 468, 62 P.2d 436, 438; State v. King, 303 S.W.2d 930, 934. See Confinement; Custody." Blacks Law Dictionary, Fifth Edition at page 404.

Washington Court's have consistently held that once you turn on your lights and stop me, that you have invoked a seizure, that I am not free to leave and that I am under arrest to wit:

> **"A motorist is seized when a police officer pulls up behind his car and activates full emergency lights." State v. DeArman, 54 Wn. App. 621, 624, 774 P.2d 1247 (1989)**.
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> "Under the totality of the circumstances, the officers' attempt to summon the occupants of the parked car with both their emergency lights and high beam headlights constituted a show of authority sufficient to convey to any reasonable person that voluntary departure from the scene was not a reasonable alternative. Cf. United States v. Palmer, 603 F.2d 1286, 1289 (8th Cir. 1979). In the present case, however, **we conclude that Stroud was "seized", for Fourth Amendment purposes, at the moment the officers pulled up behind the parked vehicle and switched on the flashing light**." State v. Stroud, 30 Wn.App. 392 (1981).
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> "A person is "seized" within the meaning of the Fourth Amendment only when, in light of all the surrounding circumstances, a reasonable person would believe that he or she was not free to leave." United States v. Mendenhall, 446 U.S. 544, 554 100 S.Ct 1870, 64 Led. 2d 497 (1980); State v. Young, 135 Wn.2d 498, 509, 957 P.2d 681 (1998).
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> "Under both state and federal law, whenever a police officer stops a motorist, he has "seized" him." State v. Silvernail, 25 Wn.App. 185, 605 P.2d 1279 (1980).

The Court in Seattle v. Sage, 11 Wn. App. 481, at pages 484-485, 523 P.2d 942, rev. denied 84 Wn.2d 1013 (1973), observed:

> "**. . . a person is placed under arrest when he is deprived of his liberty by an officer who intends to arrest him**. The arresting officer does not need to orally communicate this intent to the person being arrested. State v. Sullivan, 65 Wn.2d 47, 395 P.2d 745 (1964). Here the arrest occurred when the officer informed the aid car attendant that the defendant was under arrest **and was not to be allowed to leave**. **The arrest was valid**. (Emphasis mine). See also State v. McIntyre, 92 Wn.2d 620, 623, 600 P.2d 1009 (1979).

State v. Byers, 88 Wn.2d 1, 559 P.2d 1234 (1977) cited with approval in State v. Dunn, 22 Wn.App. 362 (1979), appears to be the modern case most cited in Washington as to what constitutes an arrest. At page 5 the court states:

> "A person is restrained or imprisoned when he is deprived of either liberty of movement or freedom to remain in the place of his lawful choice; and such restraint or imprisonment may be accomplished by physical force alone, or by threat of force, or by conduct reasonably implying that force will be used. Kilcup v. McManus, 64 Wn.2d 771, 777, 394 P.2d 375 (1964). **Appellants were under arrest from the moment they were not, and knew they were not free to go.** United States v. See, 505 F.2d 845, 855 (9th Cir. 1974) **'when the officers interrupted the two men and restricted their liberty of movement, the arrest for purposes of this case was complete**' Henry v. United States, (supra) at 103." State v. Byers, supra, at page 5. See also Moore v. Pay 'n Save, 20 Wn.App. 482 (1978).

In State v. Sullivan, 65 Wn.2d 47, 395 P.2d 745 (1964), the court observed at page 51:

> "Perhaps it should be mentioned that as a general rule **a person is placed under arrest when he is deprived of his liberty by an officer who intends to arrest him**. It is not always necessary for the officer to make a formal declaration of arrest. See: 1 Varon, Searches, Seizures and Immunities, 75 (1961); Henry v. United States, 361 U.S. 98, 4 L.Ed.2d 134, 80 S.Ct. 168 (1959) and United States v. Boston, 330 F.2d 937 (1964). And;
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> "The stopping of an automobile by a highway patrol officer for inspection of a driver's license, or for any other purpose where it is accomplished by the authority of the officers, is an "arrest." Robinson v. State, 198 S.W.2d 633, 635, 184 Tenn. 277
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> "A motorist stopped by a traffic officer for a traffic offense would be considered "arrested" . . . even if the motorist was not specifically informed that he had been arrested." People ex rel. Winkle v. Bannan, 125 N.W.2d 875, 879, 372 Mich. 292.
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> "Any restraint, however slight, upon another's liberty to come and go as one pleases, constitutes an "arrest." Swetnam v. W.F. Woolworth Co., 318 P.2d 364, 366, 83 Ariz. 189.

See also United States v. Boston, 330 F.2d 937 (1964); United States v. Shelby, 407 F.2d 241 (Ninth Circuit, 1969); United States v. Willis, 248 F.Supp. 265 (D.C. 1965); Virgin Island v. Quinones, 301 F.Supp. 246 (D.V.I. 1969); State v. Mallet, 542 S.W. 2d 584; Pullins v. State, 256 N.E. 2d 553, 556 (Sup.Ct. Ind., 1970); Dillon v. State, 275 N.E.2d 312 (Sup.Ct.Ind., 1971); United States v. Strickler, 490 F.2d 378 (9th Cir. 1974); Jackson v. United States, 408 F.2d 1165, 1169 (8th Cir. 1969); Presly v. State, 75 Florida 434, 78 So. 532, LRA 1918 C. 975; 4 Wharton's Criminal Procedure 281; and 4 Am Jur. 5 defining what constitutes an "arrest."

For help, call Tribal Court Attorney Luis Ewing at (253) 226-3741 or <rcwcodebuster@yahoo.com> Or Contact Kurt Riggin at Cellular Phone: (720) 299-5155 or E-Mail to: kurt@gunsandyoga.com