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Both the United States and the New Hampshire Constitutions limit and define the extent to which police officers may compel citizens to give either physical or testimonial evidence. These constitutional provisions are fully applicable to the relationship between college students and police officers.

The Fourth Amendment to the United States Constitution and Part I, Article 19 of the New Hampshire Constitution prohibit unreasonable seizures and searches of either persons or their private belongings. The Fifth Amendment to the United States Constitution and Part I, Article 15 of the New Hampshire Constitution both give persons the right not to incriminate themselves in questioning by police officers. These are the most important constitutional provisions college students should keep in mind when confronted by the police.

There are typically two scenarios in which students come in contact with police. The most common interaction between police officers and students is the detention and arrest of students under 21 years of age for the suspicion of being minors in possession of alcohol. New Hampshire law, as set forth in RSA 179:10, makes it unlawful for persons under twenty-one to possess alcohol in one of two ways. The first is that they may not actually physically possess an alcoholic beverage.

The second way a minor in possession of alcohol case can be brought is if there is evidence that a person under twenty-one is intoxicated by consumption. Intoxicated is the operative word. New Hampshire statute does not prohibit possession through mere consumption. Rather, there must be a affirmative evidence that a person is intoxicated.

Proving intoxication is often problematic for the police. To that end, the police officers often request a person under twenty-one submit to physical testing, either coordination testing or breath testing. It is important for the student to understand that a police officer cannot compel the testing. If testing is undertaken it must be consensual. A student has every right to decline or participate in any physical testing or any breath testing.

There is often confusion regarding breath testing because the law is different when dealing with the operation of an automobile. If an operation of an automobile is not implicated in an investigation, there simply is no obligation to take a breath test, nor any consequences if a breath test is refused. The police desire a breath test because it creates evidence of intoxication.

If a student declines taking a breath test the police do have one option and that option is to go to a judge to obtain a search warrant. If a search warrant is obtained the student does not have the right to decline to give a breath or blood sample. This is rarely done.

The right against self-incrimination as guaranteed by both the United States Constitution and New Hampshire Constitution is also implicated in alcohol related detentions. If a police officer stops a student on suspicion of being a minor in possession of alcohol the law does seem to require that a student identify themselves with a valid ID if requested to do so. However, beyond any identification questions, a student is under no obligation to provide any other information to the police officer, including their age, whether they have been drinking, or how much they drank.

A student should evaluate carefully whether or not it is in his or her interest to speak to the police. However, they should also always remember that they have the absolute option of not giving

any information except for the previously mentioned identification questions.

The second common area of interaction between police and students is when police request to search either a student's person, residence or automobile. A student has an absolute right not to consent to the pre-arrest search of his person, residence or automobile. The Constitutions very carefully lay out the proper procedure by which the police can search persons and places. The police are required to go to a judge to make their case that a person, residence, or automobile be searched. If they make a case through establishing probable cause, the Judge will issue a search warrant. Police often seek to short-circuit the process by obtaining consent. The law is very clear that persons have an absolute right not to consent and that any consent given has to be voluntary, without any coercion and with knowledge of their right to refuse the search. The police may conduct a limited "pat down: search of a person if they reasonably believe that person has committed a crime and that the person is presently armed and dangerous. The pat down search may not be conducted merely to look for evidence.

The law does allow police to temporarily seize a person, residence, or automobile to allow them sufficient time to procure an arrest warrant. This may create an inconvenience for the citizen or student, but the written record the police must establish to get a search allows a review of the police conduct leading up to the search. This in some cases can lead to dismissal of the case if, upon a subsequent Court review, probable cause was found not to be established or proper procedure was not followed.

If a citizen consents to the search, then there can be no such review. Again, it must be stressed that the Constitution unequivocally conveys these rights to persons, and persons should not view this in any way as being obstructive or not cooperative.

These Constitutional provisions strike a balance between the State's need to ferret out crime and an individual's right to be free from unreasonable intrusion by the State.

The police are well aware of the legal mechanisms they can employ to obtain evidence or statements. Citizens should be likewise aware of their options whenever confronted by police officers.