

Basic Course Workbook Series



Learning Domain 16

Search and Seizure

Version 5.0

COMMISSION ON PEACE OFFICER STANDARDS AND TRAINING

**Basic Course Workbook Series
Student Materials
Learning Domain 16
Search and Seizure
Version 5.0**

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The mission of the California Commission on Peace Officer Standards and Training is to continually enhance the professionalism of California law enforcement in serving its communities.

THE ACADEMY TRAINING MISSION

The primary mission of basic training is to prepare students mentally, morally, and physically to advance into a field training program, assume the responsibilities, and execute the duties of a peace officer in society.

FOREWORD

The California Commission on Peace Officer Standards and Training sincerely appreciates the efforts of the many curriculum consultants, academy instructors, directors and coordinators who contributed to the development of this workbook. We must also thank the California law enforcement agency executives who allowed their personnel to participate in the development of these training materials.

This student workbook is part of the POST Basic Course Training System. The workbook component of this system provides a self-study document for every learning domain in the Basic Course. Each workbook is intended to be a supplement to, not a substitute for, classroom instruction. The objective of the system is to improve academy student learning and information retention and ultimately contribute to you becoming a peace officer committed to safety, and to the communities you will serve.

The content of each workbook is organized into sequenced learning modules to meet requirements as prescribed both by California law and the POST Training and Testing Specifications for the Basic Course.

It is our hope that the collective wisdom and experience of all who contributed to this workbook will help you, the student, to successfully complete the Basic Course and to enjoy a safe and rewarding career as a peace officer.

MANUEL ALVAREZ, Jr.
Executive Director

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Student Workbooks

The student workbooks are part of the POST Basic Course Instructional System. This system is designed to provide students with a self-study document to be used in preparation for classroom training.

Regular Basic Course Training Requirement

Completion of the Regular Basic Course is required, prior to exercising peace officer powers, as recognized in the California Penal Code and where the POST-required standard is the POST Regular Basic Course.

Student Workbook Elements

The following elements are included in each workbook:

- Chapter contents, including a synopsis of key points,
- Supplementary material, and
- A glossary of terms used in this workbook.

HOW TO USE THE WORKBOOK

Introduction

This workbook provides an introduction to the training requirements for this Learning Domain. It is intended to be used in several ways: for initial learning, for test preparation, and for remedial training.

Workbook Format

To use the workbook most effectively, follow the steps listed below.

Step	Action
1	Begin by reading the: Introduction and How to Use the Workbook, which provides an overview of how the workbook fits into the POST Basic Course Instructional System and how it should be used.
2	Refer to the Chapter Synopsis section at the end of each chapter to review the key points that support the chapter objectives.
3	Read the text.
4	Complete the Workbook Learning Activities at the end of each chapter. These activities reinforce the material taught in the chapter.
5	Refer to the Glossary section for a definition of important terms. When first referenced these terms will be bolded and underlined (e.g., <u>term</u>).

Chapter 1

Basic Principles of Search and Seizure Law

OVERVIEW

Learning Need

Peace officers must have a clear understanding of their authority, responsibility, and potential for liability in the areas of search and seizure law, as well as the protections provided by constitutional law, statutory law, and case law against unreasonable search and seizures

Learning Objectives

The chart below identifies the student learning objectives for this chapter.

After completing study of this chapter, the student will be able to:	Objective ID
<ul style="list-style-type: none">Recognize constitutional protections guaranteed by the Fourth Amendment	16.01.2
<ul style="list-style-type: none">Identify the concept of reasonable expectation of privacy	16.01.3
<ul style="list-style-type: none">Recognize standing and how it applies to an expectation of privacy	16.01.4
<ul style="list-style-type: none">Recognize probable cause to search and its link between Fourth Amendment protections and search and seizure law	16.01.5
<ul style="list-style-type: none">Recognize how the exclusionary rule applies to a peace officer's collection of evidence	16.01.6

In This Chapter

This section focuses on the principles upon which law enforcement search and seizure practices are based. Refer to the chart below for a specific topic.

Topic	See Page
Fourth Amendment Protections	1-3
Reasonable Expectation of Privacy	1-6
Probable Cause to Search	1-12
Chapter Synopsis	1-14
Workbook Learning Activities	1-16

FOURTH AMENDMENT PROTECTIONS

Introduction

The Fourth Amendment to the Constitution prohibits unreasonable searches and seizures by the state and establishes that any search or seizure by the state must be based on probable cause.

Policing In the Community

The community expects their peace officers to abide by a set of rules and work within the limitations and restrictions placed on them to ensure a free and democratic society. Doing so fosters trust. Trust is the critical link in the community/law enforcement partnership.

Constitutional Protections

A priority of the authors of the United States Constitution and the California Constitution was to avoid unlimited actions and intrusions by the government and to protect a person's:

- Privacy
- Liberty
- Possession of property

Fourth Amendment

The Fourth Amendment to the United States Constitution (Article 4 of the Bill of Rights) states:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the persons or things to be seized.

Article 1, Section 13

Article 1, Section 13, of the California Constitution states:

The right of the people to be secure in their persons, houses, papers, and effects against unreasonable seizures and searches, shall not be violated, and a warrant may not be issued except on probable cause, supported by oath or affirmation, particularly describing the place to be searched and the persons and things to be seized.

Unreasonable Searches

The Fourth Amendment does not give individuals an absolute right to privacy; neither does it prohibit all searches. It limits only those searches conducted by the government that are considered *unreasonable* by the courts.

To determine what is reasonable, the courts must look at the totality of circumstances and balance the individual's right to privacy against the government's need to gather evidence and apprehend criminals.

Limitation On Government's Power

The Fourth Amendment, like the other Amendments in the Bill of Rights, limits the power *of the government* but does not apply to actions by private individuals. A private person is not a government agent unless they are directed or encouraged by a peace officer to conduct a search or seizure (see LD 15 page 4-20 Wilkinson 2008). If a private individual violates someone else's expectation of privacy, the victim may be able to make a claim in the civil court system.

Related Terms

To better understand the Fourth Amendment, peace officers need to understand the following terms.

A **search** occurs when an expectation of privacy that society is prepared to consider reasonable is infringed upon by the government.

A **seizure of property** occurs when there is some meaningful interference with an individual's possessory interest in that property by the government.

A **seizure of a person** occurs when:

- A peace officer physically applies force
- A person voluntarily submits to a peace officer's authority

REASONABLE EXPECTATION OF PRIVACY

Introduction

The Fourth Amendment is not violated unless a person's legitimate expectation of privacy is infringed upon by the government.

Expectation Of Privacy

A **reasonable expectation of privacy** can exist almost anytime and anyplace as long as:

- Individuals have indicated that they personally (*subjectively*) expect privacy in the object or area
- Their expectation is one which society is prepared to recognize as legitimate

Related Terms

To better understand the expectation of privacy, peace officers need to understand the following terms.

Subjective expectation of privacy is a person's state of mind demonstrated by affirmative action designed to protect their privacy (e.g., building a fence, closing window shades, locking a compartment, etc.).

Objective reasonableness refers to whether society is prepared to recognize the individual's expectation as reasonable.

Curtilage means the relatively small and usually well-defined area immediately around a residence to which the occupant has a reasonable expectation of privacy (garage, garden, etc.).

NOTE: When determining curtilage of a home, courts have considered the following factors: proximity, use, enclosures and sight screening (i.e., types of fencing, shrubbery, etc.). *United States v. Dunn* 480 US 294 (1987)

Expectation Of Privacy Beyond a Home or Person

Everyone can reasonably expect privacy in his or her own *person* and *home*. A peace officer must also consider the expectation of privacy in areas beyond, but close to, the home (curtilage). The following table illustrates a number of situations and how the expectation of privacy can vary depending on the totality of the circumstances.

Area	If...	Then...	Expectation of Privacy
A backyard	A fence with a closed gate surrounds the backyard of a residence.	Common sense and custom would suggest that the general public is not expected to enter.	Higher
	The occupants of the residence post signs directing the general public to come into the backyard for a yard sale.	The occupants expect the general public to enter the backyard freely.	Lower
A front yard	Tall shrubbery is planted in front of the house, limiting the view and access by the general public.	It can be assumed that the occupants expect this area to be blocked off from the general public.	Higher
	There are no physical barriers preventing members of the public from freely approaching a residence through the front yard.	This area is open to the public having business with the occupants.	Lower

Expectation Of Privacy Beyond a Home or Person (Continued)

Area	If...	Then...	Expectation of Privacy
A driveway	There are closed gates at the entrance of a driveway.	The occupants wish to block access to the driveway by the general public.	Higher
	The general public must use the driveway to gain access to the walkway that leads to the front door from the public street.	It can be assumed the driveway is part of the open access to the front door.	Lower
Windows	The window shades or curtains of a room are drawn.	The occupants wish to block any view of the area from the general public.	Higher
	The window shades or curtains are open or are constructed of material which is easily seen through.	The occupants do not care if the general public can see into the area from the outside.	Lower

Expectation Of Privacy Beyond a Home or Person (Continued)

Area	If...	Then...	Expectation of Privacy
Walls	A solid wall is so tall that the general public cannot see over it.	The occupants wish to block access and view to the area beyond the wall.	Higher
	A wall is only three feet tall.	The occupants are not trying to prevent the general public from viewing what is beyond the wall.	Lower
Fences	A fence is constructed so that it cannot be seen through without getting very close and peeking.	The occupants wish to block the view into the area beyond the fence.	Higher
	A fence is constructed of wire.	The occupants wish to block access but not the view into the area beyond the fence.	Lower
Garbage	A garbage can is stored next to a side door to their house.	The owner considers it within the curtilage of the residence.	Higher
	A homeowner's garbage is bagged and placed at curbside.	The trash is outside the curtilage of the residence within access to the general public.	Lower

Open Fields

Open fields means outdoor real property, outside the curtilage of the residence.

Open fields are areas which are so open to public view that the owner or possessor is deemed to have *implicitly invited* the general public to view the area. Because of the lack of a *reasonable* expectation of privacy in open fields, the protections of the Fourth Amendment do not apply.

NOTE: Open fields do not have to be either *open* or real *fields* to qualify.

Overflights

An **overflight** is the flight of a plane or helicopter over a given area.

Because of the lack of a *reasonable* expectation of privacy in an area that can be viewed from an overflight, the protections of the Fourth Amendment do not apply, as long as the aircraft is:

- At an altitude permitted by FAA regulations
- Being operated in a “physically nonintrusive manner”

NOTE: The use of a drone by a private citizen to invade the privacy of another individual would be remedied through civil means.

Standing

Standing exists only if a subject has a reasonable expectation of privacy in the place or thing that is searched or seized. To challenge a particular search or seizure, a person must have a reasonable expectation of privacy in the place or thing that was searched or seized. Only a person with standing can challenge the search or seizure of property, based on Fourth Amendment protections.

Standing generally is established by:

- Ownership
- Lawful possession
- Authority
- Control of the area searched or the property seized

Examples

A live-in housekeeper gives consent for peace officers to enter and search for illegal weapons in the residence where she works. The homeowner has given the housekeeper authority over the residence; therefore, the housekeeper has standing to challenge the legality of the consent search later in court.

A male defendant contests the search of his toolbox that he had locked and placed in a friend's garage. By locking the toolbox, the owner demonstrated an expected level of privacy over its contents. Only the owner of the toolbox, not the friend who owned the garage, would have standing to challenge the legality of the search of the toolbox.

PROBABLE CAUSE TO SEARCH

Introduction

The Fourth Amendment states:

The right of the people to be secure in their person, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrant shall issue, but upon probable cause...

Definition

Probable cause to search an area or object means having enough facts or information to provide a *fair probability*, or a *substantial chance*, that the item sought is located in the place to be searched.

Thus, probable cause requires something less than an absolute certainty, but something more than a mere hunch or suspicion.

Probable Cause to Search

Peace officers must demonstrate that probable cause exists to search a specific place for specific property or contraband which will be used as evidence. Even though the court will consider the totality of the circumstances, to meet the Fourth Amendment requirement, officers must have specific facts which can be articulated in court or in a sworn statement (affidavit).

To establish probable cause to search, peace officers must be able to articulate how and why they have a *fair probability* to believe:

- A crime has occurred or is about to occur
- Evidence pertaining to the crime exists
- The evidence is at the location they wish to search

Officer Training and Experience

A peace officer's training and experience is relevant in establishing probable cause. Facts must be seen and weighed as understood by a reasonable officer with that particular officer's training and experience.

The Exclusionary Rule

If a court finds a search or seizure is not reasonable and a person's Fourth Amendment rights have been violated by the government, all items seized during the search could be ruled inadmissible or *excluded* as evidence at trial.

NOTE: This inadmissible or excluded evidence is often referred to as "The fruit of the poisonous tree."

NOTE: The exclusionary rule does not appear anywhere in the Constitution but rather was created by the United States Supreme Court to encourage proper law enforcement conduct. Usually, the evidence is excluded as a *penalty* for the illegality of the search or seizure. *Mapp v. Ohio 1961*

Learning Need

Peace officers must have a clear understanding of their authority, responsibility, and potential for liability in the area of search and seizure law, as well as the protections provided by constitutional law, statutory law, and case law against unreasonable search and seizures.

Fourth Amendment Protections [16.01.2]

The Fourth Amendment provides for:

- The people to be secure in their persons, houses, papers, and effects
- Against unreasonable searches and seizures
- And no warrants shall issue, but upon probable cause
- Supported by oath or affirmation
- Particularly describing the place to be searched and the persons or things to be seized

Reasonable Expectation of Privacy [16.01.3]

A reasonable expectation of privacy exists as long as:

- Individuals have indicated that they personally (*subjectively*) expect privacy in the object or area
- Their expectation is one which society is prepared to recognize as legitimate

Standing [16.01.4]

Standing exists only if a subject has a reasonable expectation of privacy in the place or thing that is searched or seized. Standing generally is established by ownership, lawful possession, authority, and/or control of the area searched or the property seized.

Probable Cause To Search [16.01.5]

Probable cause to search for an object or area means having enough facts or information to provide a *fair probability*, or a *substantial chance*, that the object sought is located in the place to be searched.

Exclusionary Rule [16.01.6]

If a court finds that a search is not reasonable and that a person's Fourth Amendment rights have been violated by the government, all items seized during the search could be ruled inadmissible or *excluded* as evidence at trial.

WORKBOOK LEARNING ACTIVITIES

Introduction

To help you review and apply the material covered in this chapter, a selection of learning activities has been included. No answers are provided. However, by referring to the appropriate text, you should be able to prepare a response.

Activity Questions

1. Describe two different backyards where the occupants of the first have a reasonable expectation of privacy while the owners of the second do not (or at least do not to the same extent). Explain why there is not a reasonable expectation of privacy, or diminished expectation of privacy, or diminished expectation of privacy, in the second backyard. If both yards are in the flight path of a small local airport, which, if either, has a reasonable expectation of privacy from overflight observations? Explain.
2. What is the exclusionary rule? How does it work to help peace officers honor the Fourth Amendment rights of potential suspects?

Activity Questions (Continued)

3. Several handguns have been stolen from the home of a gun collector. A person, who has been reliable in the past, tells officers that a local gang is involved in the theft. Peace officers know that one of the gang members lives within five blocks of the house where the theft occurred. Do officers have probable cause to search the house? Why or why not?

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Chapter 2

Warrant Searches and Seizures

OVERVIEW

Learning Need

To search for and seize evidence legally, peace officers must know the rules and requirements for obtaining and executing a search warrant.

Learning Objectives

The chart below identifies the student learning objectives for this chapter.

After completing study of this chapter, the student will be able to:	Objective ID
<ul style="list-style-type: none">Recognize how probable cause serves as a basis for obtaining a search warrant	16.02.2
<ul style="list-style-type: none">Recognize the necessary conditions for securing an area pending issuance of a search warrant	16.02.7
<ul style="list-style-type: none">Identify the time limitations for serving a search warrant	16.02.8
<ul style="list-style-type: none">Recognize the elements for compliance with the knock and notice requirements when serving a search warrant	16.02.9
<ul style="list-style-type: none">Recognize the application of the Nexus Rule while conducting an authorized search	16.02.10

In This Chapter

This section focuses on obtaining and executing a search warrant. Refer to the following chart for specific topics.

Topic	See Page
Introduction to Warrant Searches	2-3
Probable Cause to Search	2-6
Execution of a Search Warrant	2-11
Chapter Synopsis	2-21
Workbook Learning Activities	2-23

INTRODUCTION TO WARRANT SEARCHES

Introduction

Unless justified by an exception (consent, incident to arrest, search condition, or emergency), a search of private property may lawfully be conducted only if authorized by a search warrant.

Ethics

Peace officers must stay within the limits of the law in order to enforce and preserve it. Peace officers are part of the law, never above it. The end never justifies the means.

Warrant Clause of the Fourth Amendment

Search and seizure law originates from the Fourth Amendment of the United States Constitution and Article 1 of the California Constitution.

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the persons or things to be seized.

Definition

A **search warrant** is:

- An order in writing, in the name of the people
- Signed by a magistrate
- Directed to a peace officer
- Commanding the officer to search for an individual or individuals, a thing or things, or personal property
- In the case of a thing or things or personal property, to bring the same before the magistrate (*Penal Code Section 1523*)

Benefits of Obtaining a Search Warrant

As a general rule, the courts have found searches and seizures to be *reasonable* and therefore *lawful* when authorized by a valid warrant.

The burden is on the defendant to prove the illegality of any search executed with a search warrant.

Statutory Grounds for a Search Warrant

Penal Code Section 1524 presents the statutory grounds for issuance of a search warrant.

When the property or thing...	<i>Penal Code</i>
Was stolen or embezzled.	1524(a)(1)
Was used as the means of committing a felony.	1524(a)(2)
Is in the possession of any person with the intent to use it as a means of committing a public offense, or in the possession of another to whom the item may have been delivered for the purpose of concealing it or preventing its being discovered.	1524(a)(3)
Constitutes evidence that tends to show a felony has been committed or tends to show that a particular person has committed a felony.	1524(a)(4)
Consists of evidence that tends to show that sexual exploitation of a child (<i>Penal Code 311.1</i>), or the possession of matter depicting sexual conduct of a person under the age of 18 years (<i>Penal Code 311.11</i>), has occurred or is occurring.	1524(a)(5)

When the property or thing...	<i>Penal Code</i>
When there is a warrant to arrest a person.	1524(a)(6)
When the property or things to be seized include a firearm or any other deadly weapon that is owned by, or in the possession of, or in the custody or control of, a person described in subdivision (a) of Section 8102 of the Welfare and Institutions Code.	1524(a)(10)
When the property or things to be seized include a firearm that is owned by, or in the possession of, or in the custody or control of, a person who is subject to the prohibitions regarding firearms pursuant to Section 6389 of the Family Code, if a prohibited firearm is possessed, owned, in the custody of, or controlled by a person against whom a protective order has been issued pursuant to Section 6218 of the Family Code, the person has been lawfully served with that order, and the person has failed to relinquish the firearm as required by law.	1524(a)(11)
Is a sample of blood that constitutes evidence that tends to show a violation of Section 23140, 23152, or 23153 of the Vehicle Code and the person from whom the sample is being sought has refused an officer's request to submit to, or has failed to complete, a blood test as required by Section 23612 of the Vehicle Code, and the sample will be drawn from the person in a reasonable, medically approved manner.	1524(a)(13)
Are controlled substances or a device, contrivance, instrument, or paraphernalia used for unlawfully using or administering a controlled substance pursuant to the authority described in Section 11472 of the Health and Safety Code.	1524(a)(15)

NOTE: Use *Penal Code Section 1524(a)(4)* to seize evidence such as rent receipts to show possession or control of the premises or computers.

NOTE: *Penal Code Section 311.2* presents additional authority to obtain a search warrant to seize child pornography.

Content Of a Search Warrant

As stated in *Penal Code Sections 1529 and 1533*, the following information must appear in the search warrant:

- The *names* of all those who have sworn that the facts presented as probable cause are true
- The statutory grounds for issuing the warrant
- Descriptions of the places and/or persons to be searched
- Descriptions of the things or property to be seized
- The magistrate's signature
- The date issued
- An indication by magistrate if nighttime service is authorized

Electronic Devices

A peace officer must have a search warrant to access electronic data in a cell phone or electronic device (i.e., tablets, computers, smart watches, etc.) absent consent directly obtained from the owner or legal possessor of the device or phone unless it entails an emergency involving death/serious injury. (*Penal Code Section 1546-1546.4* Electronic Communication Privacy Act. (ECPA))

PROBABLE CAUSE TO SEARCH

Introduction

Before they can obtain a search warrant, peace officers must be able to provide a judge with specific facts that meet the Fourth Amendment's requirement of probable cause.

Constitutional Requirement of Probable Cause

The Fourth Amendment of the U.S. Constitution clearly states:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the persons or things to be seized.

Probable Cause to Search

In the search warrant context, probable cause to search means enough credible information to provide a *fair probability* that the object or person the peace officers seek will be found at the place they want to search.

Officer Training and Experience

It is possible for an activity which might otherwise appear innocent to the general public to amount to probable cause to a peace officer.

A peace officer's training and experience may enter into the equation for determining probable cause. Facts must be seen and weighed as understood by a reasonable officer.

Collective Knowledge

Probable cause may be based on the collective knowledge of all the officers involved in an investigation, and all the inferences which may reasonably be drawn from this information, with that particular officer's training and experience.

Probable Cause to Search vs Probable Cause to Arrest

Probable cause to search differs in content, but not in degree of certainty, from probable cause to arrest.

Search Warrants	Arrest Warrants
Peace officers must articulate probable cause that: <ul style="list-style-type: none">• A crime has been committed, and• Evidence concerning the crime or the identity of the perpetrator is located at the place to be searched.	Peace officers must articulate probable cause that: <ul style="list-style-type: none">• A crime has been committed, and• The individual to be arrested committed that crime.

Elements Of Probable Cause to Search

To establish probable cause, peace officers must directly or circumstantially show that certain required elements exist. The following table identifies the three required elements of probable cause to search.

To establish probable cause to search, there must be a fair probability that...	Rationale	Examples
A crime occurred.	There must be at least a fair probability that a crime has occurred or, in some cases, will occur.	<ul style="list-style-type: none">• Person sold drugs to an undercover officer.• A person purchased a large amount of chemicals that could be used for a clandestine lab.

Elements Of Probable Cause to Search (Continued)

To establish probable cause to search, there must be a fair probability that...	Rationale	Examples
Evidence pertaining to the crime exists, and	Officers must establish that evidence of a crime exists. This can be accomplished by direct evidence, circumstantial evidence, or by reasonable inference.	<ul style="list-style-type: none">• Information from a victim that a gun was displayed during a robbery.• Stolen property.• Existence of items commonly used to commit or facilitate a crime (e.g., drug paraphernalia).
The evidence is located at the place to be searched.	Officers must establish that the evidence was taken to, or produced at, the place to be searched. This can be accomplished by direct evidence, circumstantial evidence, or by reasonable inference.	<ul style="list-style-type: none">• A reliable source saw the evidence at the location.• The person goes directly to a location after a crime has been committed.• The location is one where a criminal might likely hide incriminating evidence.

Related Terms

To better understand probable cause as it relates to searches and seizures, peace officers need to understand the following terms.

Reasonable inference is the act of drawing a conclusion from a fact; it is similar to making a presumption (e.g., seeing smoke and inferring there is a fire).

Direct evidence is evidence that proves a fact directly, without an inference or presumption (e.g., the sale of a controlled substance to an undercover officer).

Circumstantial evidence is evidence that proves a fact indirectly, that is, personal knowledge or observations from which *deductions* must be drawn by the jury or court (e.g., partial six-pack of beer found on the car seat supports inference that someone in the car has been drinking).

NOTE: Whether evidence is direct or circumstantial depends on the fact to be proven.

Examples

An officer found out that a man bought 400 pounds of iodine chips under an assumed name and took it to a remote location. Even though the man's behavior was legal, the officer's training and experience investigating clandestine drug labs led the officer to reason that there was a fair probability that evidence of illegal methamphetamine manufacturing would be discovered at that location.

Neighbors complained about a run-down garage with stripped cars in back and lots of activity during normal work hours as well as unusual hours at night. Most of the reported activity did not involve pumping gas or other typical gas station activities. Officers had suspected the existence of a stolen car "chop shop" within that particular neighborhood that was tied to gang activity. Although nothing illegal had taken place at the site, this information contributed toward probable cause to obtain a search warrant.

Peace officers patrolling a neighborhood notice there is heavy foot traffic in and out of one garden apartment during the day. This continues for several consecutive days, and officers note that each visitor stays only a few moments each time and seems to glance around as they leave. Neighbors have called police to report that the numerous visitors continue to show up until about 2:00 a.m. A confidential reliable informant conducted a purchase of cocaine. Due to the totality of the circumstances, officers have probable cause to obtain a search warrant.

EXECUTION OF A SEARCH WARRANT

Introduction

Even if sufficient probable cause has been established and a search warrant has been issued, evidence can still be excluded if the warrant itself is not executed within the law.

Securing an Area Pending Issuance of a Search Warrant

Under very limited circumstances peace officers may secure a residence while in the process of obtaining a search warrant. In addition to probable cause to search, they also need exigencies, that is, a belief, based on the surrounding circumstances or information at hand, that the evidence will likely be destroyed or removed before a search warrant can be obtained.

- An area may be secured pending issuance of a search warrant if the suspect has been arrested inside the location.
- An area may be secured pending issuance of a search warrant if companions of the suspect may destroy items sought upon learning of the arrest.

NOTE: Refusal of consent to enter, by itself, does not provide justification to secure the premises pending issuance of a search warrant.

Examples

Undercover officers arranged to purchase a kilo of cocaine. The seller, after showing a sample and seeing the money, drove to his supplier's residence a few miles away, obtained the cocaine, returned to the officers, made the sale, and was arrested. Other officers, who followed the seller and kept the supplier's residence under surveillance, entered and secured the residence pending procurement of a search warrant.

A male suspect was working with a female suspect selling drugs from the woman's residence. A few blocks from the woman's house, in public and in front of onlookers, police stopped the male suspect and arrested him with drugs he had admittedly obtained from his female partner. The officers had reason to believe that the female partner might learn of the arrest or become suspicious when the male suspect did not return as scheduled. The circumstances were sufficient to justify entering and securing the residence while waiting for a search warrant.

Detaining Suspects Pending Issuance of a Search Warrant

If the place being secured is occupied when peace officers enter, they will need probable cause to arrest if they take the suspect away or keep the suspect there for an unreasonable period while the warrant is obtained.

Without probable cause to arrest an individual, peace officers are only entitled to *detain* the suspect temporarily while they determine the person's involvement.

Time Limit for Service

Penal Code Section 1534 states a search warrant shall be executed and returned within 10 days after date of issuance.

The 10 calendar-days' time limit means that peace officers have 10 calendar-days within which to execute the warrant, beginning with the day after the warrant is issued and running until midnight of the 10th day, with no exceptions for weekends or holidays.

NOTE: It is a felony for a peace officer to willfully disclose the existence of a search warrant, prior to its execution, for the purpose of preventing the search or seizure. (*Penal Code Section 168*)

Failure to Make a Timely Execution

If the 10-day period has expired, peace officers must either:

- Obtain a new warrant
- Resubmit the expired warrant so it may be reissued and revalidated

Failure to Make a Timely Return

The return of the warrant means returning the warrant and a written inventory of the property taken to the magistrate (*Penal Code Section 1537*).

The rule for *return* of the warrant is slightly different than for execution. If the 10th day falls on a weekend or holiday, then peace officers are entitled to postpone returning the warrant until the next business day.

A late return will not normally invalidate the warrant or result in suppression, particularly if it happens unintentionally, unless the defendant can show prejudice.

Time of Service

Normally, a search warrant may be served only between the hours of 7:00 a.m. and 10:00 p.m. (*Penal Code Section 1533*)

Nighttime Service

If peace officers can show *good cause*, the magistrate may, at the magistrate's discretion, insert a direction in a search warrant that it may be served at any time of day or night.

The main point of the *good cause* requirement is to ensure that the request for nighttime service is specifically brought to the attention of the magistrate so that the magistrate will have to make a conscious decision whether such a particularly abrasive intrusion is appropriate. Examples of *good cause* include situations where:

- Nighttime service will decrease danger to the peace officers
- A drug sale occurred at the search location at night
- Prompt execution might preclude murders
- The property sought will likely be gone, sold, or removed by dawn
- The stolen items are primarily perishable or easily disposable goods

As long as the search begins *before 10:00 p.m.*, no nighttime authorization is necessary, even though the search may continue on well beyond that hour.

Knock and Notice Rule

Before entering a private dwelling to execute a search warrant, officers must comply with the requirements of *knock and notice* as set forth in *Penal Code Section 1531*.

Knock and notice simply means that before entering a dwelling to serve a search warrant, officers must give notice to persons inside through certain actions.

Knock and Notice Procedure

To complete the prescribed procedures for knock and notice, peace officers must:

- Knock or otherwise announce their presence
- Identify themselves as peace officers
- State their purpose
- Demand entry
- Wait a *reasonable* amount of time
- If necessary, forcibly enter the premises

Wait/Refusal Requirement

When executing a search warrant, there is a specific requirement that before forcing entry, peace officers must be *refused* admittance.

Refusal may be based on:

- A verbal statement
- Individual conduct
- The passage of a *reasonable* amount of time

NOTE: The amount of time that is considered reasonable will depend on all the circumstances. Approximately one minute would be a *safe* period in most cases, but it can be less, especially if peace officers know that someone is inside and awake.

Forcible Entry to Execute a Search Warrant

If the *knock and notice* requirements are met, including refusal, peace officers may legally break in or force entry into premises to execute a search warrant. (*Penal Code Section 1531*)

The purpose of the *knock and notice* requirements is to protect the privacy of occupants in their home and to minimize the possibility of a violent confrontation between peace officers and private individuals.

Inner Doors

While officers must comply with knock and notice at outer doors to a residence, there is no legal requirement to comply with knock and notice at inner doors.

NOTE: While there may be no legal requirement to comply with knock and notice at inner doors, there may be tactical reasons why it is appropriate.

Exceptions to Knock and Notice

The law allows peace officers to enter private property unannounced if they can demonstrate that compliance with the knock and notice requirements would be futile, or that compliance could result in:

- Harm to the officers or other individuals (e.g., hostages)
- The destruction of evidence

Only the officers serving the warrant can determine if the circumstances they face justify non-compliance with the knock and notice requirements of law. The issuing magistrate does not have the authority in the warrant to exempt officers from giving knock and notice and the legality of an officer's decision to omit knock and notice would likely be reviewed by a court to determine if it met a lawful exception.

Examples

Officers went to a motel room with a warrant to search the building for illegal drugs. After complying with initial knock and notice requirements and while waiting for a response from the occupants, officers heard muffled voices and the sound of a toilet flushing twice. Because the officers had reason to believe that suspects were attempting to destroy evidence, they could lawfully force entry.

Officers were sent to an apartment with a warrant to search for illegal weapons. The resident of the apartment had been arrested in the past by the same officers for armed robbery. The officers had specific reasons to believe the suspect was currently armed and would flee if given the opportunity. For reasons of officer safety and to prevent escape, the officers announced their presence but entered without waiting for a response.

Ruse Entry

Peace officers may use a false identity, a ruse or trick to obtain consent to enter as long as they already have a judicially authorized right to enter (i.e., a search warrant).

Example: Officers with a warrant set off firecrackers to simulate gunfire, then asked the occupants inside the fortress-like house to come outside to check their vehicles for damage. Once the barricades to the home were down, the officers announced their identity and authority to conduct a search.

Presenting the Search Warrant

If the occupant is present, peace officers should show the occupant the original warrant and give the occupant a copy.

If no one is home, a copy of the warrant may be left in a conspicuous place. Likewise, officers must leave behind a detailed list of the property taken, whether anyone is home or not. (*Penal Code Section 1535*)

NOTE: In California there is no statutory *requirement* to present a copy of the warrant to the occupant. Therefore, failure to do so will not result in the suppression of any evidence seized.

Scope and Specificity of a Search Warrant

During a search authorized by a search warrant, officers are limited by the information specified in the search warrant (this is known as the scope of the search).

Search warrants must include *specific*:

- Statutory grounds for issuance
- Identification of the area(s) or person(s) that may be searched
- Identification of the item(s) to be seized

If an area is searched or an item is seized that is beyond the scope of the warrant, the evidence may be excluded later at trial.

Detaining Persons on the Premises

Peace officers may *detain* and *frisk/pat* search persons who are present and have *demonstrated a connection* with the premises. Examples of such a connection include a person who:

- Is already inside the premises
- Has a key to enter the premises freely
- Enters the premises without knocking

Someone's mere *arrival, by itself*, at premises where a search is being conducted *does not* provide enough connection to justify a detention, let alone a cursory/frisk/pat search.

NOTE: If searching a commercial establishment, peace officers may not detain everyone who is present, but rather only those persons who appear connected to the suspected criminal activity.

Searching Containers

When a warrant authorizes the search of a residence, vehicle, or person, it automatically authorizes the search of any thing, place, or container inside that residence or vehicle, or on that person, where the object of the search might be located.

If, however, the warrant was not for a general area, but instead was for a particular container, that container would also have to be described as completely as possible in the warrant.

Examples

A search warrant authorized the search of a residence for heroin and indications of ownership and identification. Peace officers may search any place that might contain these items, including any closed containers.

A search warrant authorized the search for a particular suspect in the home of his ex-wife. Peace officers may search containers within the residence only if the containers are large enough for the suspect to hide in.

Nexus Rule

Under the *nexus rule*, officers may seize items *not listed in the warrant* when:

- The items are discovered while the officers are conducting a lawful search for the listed evidence, **and**
- They have *probable cause* to believe the item is contraband, evidence of criminal behavior, or would otherwise aid in the apprehension or conviction of the criminal

Nexus means a reasonable connection or link between two or more items.

Examples

During a warrant search for narcotics, officers found a sawed-off shotgun in the trunk of the suspect's car. Although the weapon was not named in the search warrant, it was seized by the officers as an illegal weapon.

While searching a suspect's residence on a murder case, officers seized a pair of shoes with a "waffle-like" pattern on the soles even though the shoes were not described in the search warrant. The seizure of the shoes was legal because one of the officers had personal knowledge that waffle-like shoeprints were left at the scene of the crime by the suspect.

Learning Need

To search for and seize evidence legally, peace officers must know the rules and requirements for obtaining and executing a search warrant.

Probable Cause and Search Warrants [16.02.2]

Peace officers must establish probable cause that:

- A crime has been committed
- Evidence of the crime exists
- The evidence sought is located at the place to be searched

Securing an Area [16.02.7]

Under very limited circumstances, peace officers may secure a residence while in the process of obtaining a search warrant. In addition to probable cause to search, they also need exigencies, that is, a belief, based on the surrounding circumstances or information at hand, that the evidence will likely be destroyed or removed before a search warrant can be obtained.

Time Limitations [16.02.8]

Penal Code Section 1534 states that the search warrant shall be executed and returned within 10 days from issuance, beginning with the day after the warrant is issued and running until midnight of the 10th day, with no exceptions for weekends or holidays.

A search warrant may be served only between the hours of 7:00 a.m. and 10:00 p.m., unless designated for nighttime service by the magistrate issuing the warrant.

Knock and Notice [16.02.9]

Before entering a private dwelling to execute a search warrant, officers must comply with the requirements of *knock and notice*. Peace officers must:

- Knock or otherwise announce their presence
- Identify themselves as peace officers
- State their purpose
- Demand entry
- Wait a *reasonable* amount of time
- If necessary, forcibly enter the premises

Nexus Rule [16.02.10]

Nexus means a reasonable connection or link between two or more items. The *nexus rule* states that officers may seize items *not listed in the warrant* when:

- The items are discovered while the officers are conducting a lawful search for the listed evidence, **and**
- They have *probable cause* to believe the item is contraband, evidence of criminal behavior, or would otherwise aid in the apprehension or conviction of the criminal

WORKBOOK LEARNING ACTIVITIES

Introduction

To help you review and apply the material covered in this chapter, a selection of learning activities has been included. No answers are provided. However, by referring to the appropriate text, you should be able to prepare a response.

Activity Questions

1. List at least four different statutory grounds for the issuance of a search warrant.
2. Officers are in the process of serving a search warrant to look for handguns in a suburban residence. They believe that the residents, a man, a woman, and a 5-year-old boy, are at home. What, if any, knock and notice actions should the officers take? Explain your answer. If officers give notification of their presence, and there is no response within 45 seconds, what do you think they should do? Would your answer vary if it were the middle of the night? The middle of day?

3. Peace officers enter an apartment with a search warrant for a murder weapon. While conducting the authorized search, they notice a small child cowering in a corner, covered with bruises and new welts. As one officer approaches the child, she is shielded by her mother who says, "There are no weapons here." What, if anything, should the officers do about the child? Does the nexus rule apply?

Chapter 3

Warrantless Searches and Seizures

OVERVIEW

Learning Need

When certain conditions are met, officers may lawfully search and seize evidence without a search warrant. For evidence to be admissible at trial, officers must have a clear understanding of the legal requirements for warrantless searches.

Learning Objectives

The chart below identifies the student learning objectives for this chapter.

After completing study of this chapter, the student will be able to:	Objective ID
<ul style="list-style-type: none">Recognize why a plain view seizure does not constitute a search	16.03.1
<ul style="list-style-type: none">Recognize the legal requirements for seizure of items in plain view	16.03.2
<ul style="list-style-type: none">Recognize the conditions and circumstances where warrantless searches and seizures are considered reasonable and legal	16.03.3
<ul style="list-style-type: none">Recognize the scope and necessary conditions for conducting the following types of warrantless searches:<ul style="list-style-type: none">Cursory/frisk/pat searchConsent searchesSearches pursuant to exigent circumstancesSearches incident to arrestProbation/parole searches	<div>16.03.4</div> <div>16.03.5</div> <div>16.03.6</div> <div>16.03.7</div> <div>16.03.8</div>

In This Chapter

This section focuses on warrantless searches and seizures. Refer to the following chart for specific topics.

Topic	See Page
Plain View Seizures	3-3
Warrantless Searches in General	3-7
Cursory/Frisk/Pat Search	3-9
Consent Searches	3-14
Exigent Circumstance Searches	3-21
Searches Incident to Arrest	3-28
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PLAIN VIEW SEIZURES

Introduction

Peace officers do not have to blind themselves to what is in plain view if an item they see can be associated with a crime or criminal behavior, simply because they do not have a warrant.

Leadership

Peace officers are entrusted with unusual powers and are subject to the highest level of public scrutiny. This is an awesome responsibility. As leaders, peace officers have to maintain balance between their obligation to protect themselves and the community while protecting everyone's individual rights.

No Fourth Amendment Protection

In a constitutional sense, when an officer sees an item in plain view, from a place the officer has a lawful right to be, no search has taken place. The owner or possessor obviously has no reasonable expectation of privacy for items which are in plain view. Without an expectation of privacy, the owner or possessor has no Fourth Amendment protection.

Requirements For Seizure

Peace officers must meet certain requirements before an item in plain view may be seized legally and used as evidence.

Peace officers must have:

- Probable cause
- A lawful right to be in the location
- Lawful access to the item

Probable Cause for Seizure

Even though peace officers need not appear before a magistrate, they still must have enough facts to provide probable cause, that is, a *fair probability* that the item in plain view is contraband or evidence of a crime.

The incriminating character of the item must also *be immediately apparent* to the officer.

NOTE: Officers may use all of their senses, not just sight, to obtain probable cause. The plain view doctrine, therefore, can also include items they can smell, hear, or touch from a lawful position.

Observation From a Lawful Location

Peace officers must have a *lawful right* to be at the location from which they initially observe the item. That is, the observation must be made from a vantage point that does not violate an individual's reasonable expectation of privacy.

Public Access Areas

Any area the general public or some members of the public have been given either express or implied permission to be in is considered a **public access area**. Peace officers have the legal right to make observations from any public access area at any time.

Examples

Officers with an arrest warrant were handcuffing the suspect inside a motel room. While standing in the doorway the officers saw two cocaine pipes in plain view inside the room. The officers were entitled to intrude further into the room to seize the two pipes. But they were not entitled to search the remainder of the room on probable cause alone absent a search warrant. If officers have the right to seize items in plain view, they also have the right to inspect and photograph those items subject to seizure.

Contraband was observed in a business that was open to the public. The officer's observations from the area were legal since the general public was free to be in the same area.

Surveillance

It is not a *search* for peace officers to conduct surveillance of private premises or to follow people who leave the premises, as long as the observations are made from a place where the officer has a right to be. Videotaping a suspect's activities is a form of surveillance.

Sensory Aids

If officers are in a place where they have a lawful right to be, and if they use a device that is nonintrusive to aid or enhance their observations, their observations of items or areas in plain view are lawful, despite the enhancement. The chart below presents further information regarding sensory aids.

Devices	Guidelines
Flashlights Night vision devices	May be used as long as the officer is using them from a lawful observation point.
Binoculars	May be used to enhance only what can already be seen by the naked eye from a lawful observation point.
Dogs	Contraband-sniffing dogs are considered nonintrusive when they are in a place, they have a lawful right to be. If a specially trained dog reacts positively to an item, this normally provides the officer with probable cause to search or seize the article, although a search warrant may be required in some circumstances.

Abandoned Property

If an item has been abandoned by the owner, the owner has relinquished any expectation of privacy over the item. The Fourth Amendment does not protect articles or an area that has been abandoned by its owner.

NOTE: Trash placed in a position for pick-up outside the curtilage of the residence is considered abandoned.

Lawful Access

Simply because an officer can see an object in plain view from a lawful location does *not automatically* mean the officer may legally *enter* private property without a warrant to seize it, even if the object is obviously contraband or evidence of a crime. The officer also needs lawful access.

Lawful access to private property is most commonly obtained when:

- The officer's entry is based on *consent*
- The officer's entry is based on *exigent circumstances*, for example, a reasonable belief that the evidence will be destroyed if entry is delayed in order to obtain a warrant
- The officer has lawfully entered the area for some other purpose (e.g., to conduct a parole or probation search, or an administrative or regulatory search, etc.)

Examples

An officer responding to a burglary call talked to a neighbor who said two teenagers had just fled with a TV. While investigating, the officer found an open window on the property with a box on the ground beneath it containing a TV. The officer entered the property to see if any burglars or victims might still be inside. Once inside, the officer found a clandestine drug lab in plain view. Because the entry was lawful based on exigent circumstances, observation and seizure of the lab was also lawful.

Two officers conducting a valid, warrantless administrative inspection of an automobile repair shop came across evidence of drugs in plain view and through plain smell. The officers had legal authority to seize the evidence because they were conducting other legal business in that location.

WARRANTLESS SEARCHES IN GENERAL

Introduction

Under the Fourth Amendment, warrantless searches of private property are presumptively illegal. However, **case law** has created some exceptions to the warrant requirement. Warrantless searches will be upheld if the peace officer's conduct came within one of these exceptions.

Fourth Amendment Protection

The first clause of the Fourth Amendment states people have a right to be protected from unreasonable searches and seizures by government agents.

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the persons or things to be seized.

Case Law Exceptions

The Fourth Amendment does not give individuals an absolute right to privacy, and it does not prohibit all searches only those that are unreasonable.

The courts have identified certain specific conditions and circumstances where warrantless searches and seizures are considered reasonable and, therefore, legal.

In addition to plain view seizures, these exceptions to the usual warrant requirement include:

- Cursory/frisk/pat down
- Consent searches
- Searches pursuant to exigent circumstances
- Searches incident to custodial arrest
- Probation/parole searches

Establishing the Basis for a Warrantless Search or Seizure

In deciding whether a warrantless search or seizure was legal, courts will always consider the *totality of the circumstances*. However, peace officers must always have specific facts to demonstrate the search, or seizure fell within one of the exceptions to the warrant requirement.

CURSORY/FRISK/PAT SEARCHES

Introduction

Normally, non-consensual searches are not permitted during a detention. However, if an officer has a factual basis to suspect the person being detained poses a danger to the officer or is carrying a concealed weapon or an object that could be used as a weapon, the officer is justified in conducting a *limited* search for the weapon without a warrant.

Definition

A cursory/frisk/pat search is a strictly limited search for *weapons* of the outer clothing of a person who has been lawfully detained. A cursory/frisk/pat search is a search for possible weapons only, not a search for contraband or other evidence.

Necessary Conditions

Cursory/frisk/pat searches of detainees are allowed to prevent unexpected assault on peace officers. But a generalized, non-specific concern for officer safety is not sufficient reason to allow for the intrusion of a cursory/frisk/pat search.

For a cursory/frisk/pat search to be lawful:

- The person must be lawfully detained for an investigative purpose
- The searching officers must be able to articulate *specific facts* which caused them to reasonably believe the person is dangerous or may be carrying a weapon

Scope of the Search

The scope of a cursory/frisk/pat search is limited to outer clothing for weapons or potential weapons *only*.

Once the officer conducting the search realizes an object is not a weapon, the officer cannot further manipulate the object; the officer must move on.

Any additional feeling, grabbing, or manipulating of the item is outside the scope of a cursory/frisk/pat search and will be considered an illegal search.

Absolute Certainty Not Required

An officer need not be absolutely certain that the person is armed or potentially dangerous. However, the officer's suspicion must be reasonable and based on specific facts.

The following table identifies factors that have been recognized as contributing to the suspicion that the person may be carrying a weapon or pose a danger.

Factor	Examples
Clothing	<ul style="list-style-type: none">• Bulge in clothing that is the size of a potential weapon• Wearing a heavy coat when the weather is warm
Actions	<ul style="list-style-type: none">• Trying to hide something• Appearing overly nervous• Acting in a threatening manner
Prior knowledge	<ul style="list-style-type: none">• History of carrying weapons or violent behavior
Reason for detention	<ul style="list-style-type: none">• Stopped in order to investigate a serious, violent, or armed offense
Companions	<ul style="list-style-type: none">• Lawful search of companions revealed a weapon or potential weapon
Location	<ul style="list-style-type: none">• Stopped in an area known for violence, or where the officer is unlikely to receive immediate aid if attacked
Time of day/amount of light	<ul style="list-style-type: none">• Stopped during nighttime• Stopped in an area with little or no lighting
Ratio	<ul style="list-style-type: none">• Detainees outnumber officers

Contraband

If, during a lawful cursory/frisk/pat search for weapons, an item is discovered that is immediately recognized as contraband (based on plain sight, smell, or touch) without any undue manipulation, the officer may seize it. If the person is placed under arrest, the officer may then conduct a *full* search incident to the custodial arrest.

If the item is *not* immediately recognized as contraband, the officer may not manipulate the suspected area or object further in order to establish its nature, unless the officer is still concerned it may be a weapon or potential weapon.

Containers

If the officer comes across a container on the person during a cursory/frisk/pat search, the officer is entitled to seize it and open it *only if* it is reasonable to believe it can be used as a weapon or that it might contain a weapon.

Detention alone does not give officers the right to search (open) the container, unless their knowledge and experience provide *probable cause* to believe that it contains contraband (i.e., they could easily feel that the object was small and resilient like a heroin-filled balloon), since with probable cause they could make an arrest. **(In general, common containers like cigarette packs and pill bottles are not searchable.)**

Reaching Inside

During a cursory/frisk/pat search, an officer may reach inside a subject's clothing or pockets to inspect an object further only if:

- The object reasonably felt like a weapon or something that could be used as a weapon
- The subject's clothing is so rigid or heavy that the officer could not rule out the possibility of a weapon or potential weapon

NOTE: In addition to what officers may lawfully do as part of a cursory/frisk/pat search for weapons, they may also always seek voluntary *consent* to search. Such consent to search can be for any part of a suspect's clothing or belongings, and for any objects (such as drugs) the officer asks about.

Discovery

If an officer discovers an object during a cursory/frisk/pat search and the officer believes is a weapon or a dangerous instrument which could be used as a weapon, the officer has a right to seize it from the person.

The officer may hold the weapon or potential weapon until the detention is concluded. If there is no probable cause to make an arrest, then the item must be returned to the subject.

NOTE: A cursory/frisk/pat search *does not end* when an officer finds a *single* weapon or potential weapon. Officers must be aware subjects may be carrying more than one item at a time that could pose a potential danger.

Transporting a Passenger

Peace officers may conduct a cursory/frisk/pat search of any person the officers have a *duty or are obligated to transport* before permitting the person to ride in a law enforcement vehicle.

If officers are not obligated to transport the person, a cursory/frisk/pat search is permitted only if the officer informs passengers that:

- They have the right to refuse the ride
- If they accept the ride, they must first consent to a cursory/frisk/pat search

Examples

An officer was in a hotel room questioning a female companion of a man who had been arrested for armed robbery earlier that day. In the course of the questioning, the woman grabbed her make-up bag from a nearby dresser. Because it was reasonable to suspect that the woman might be reaching for a weapon, the officer seized the bag. When the officer realized the bag was heavy and large enough to potentially contain a weapon, he opened the bag to search it.

An officer, responding to a complaint regarding a panhandler, noticed a large bulge in the front waistband of the man's trousers. Because of the size and location of the bulge, the officer believed the item could be a weapon and conducted a cursory/frisk/pat search of the man. When the item turned out to be a rolled-up piece of clothing, the officer continued the frisk and found no other indications that the man was a potential danger.

While on routine patrol one morning, two officers spotted a young man looking into parked cars in an alley where there had been earlier complaints of vehicle tampering. As the officers drove by slowly, the man tried to hide behind a dumpster. When the officers approached him, the man became nervous, boisterous, and antagonistic. Because the young man's actions and behavior gave the officers reason to believe that he might pose a danger, they could lawfully conduct a cursory/pat search for weapons or potential weapons.

CONSENT SEARCHES

Introduction

Generally, the Fourth Amendment prohibits warrantless searches. However, peace officers may enter premises and/or conduct searches without a warrant if they have obtained valid consent.

Warrant Searches vs Consent Searches

If officers have probable cause to search but lack an exigent circumstance to justify a warrantless entry, they should always seek a warrant instead of seeking consent.

Without a warrant:

- The occupant of the property has the right to refuse entry and therefore refuse the search
- The occupant of the property may revoke consent at any time during the search even if consent was initially granted
- The occupant of the property may set parameters for the areas to be searched
- Even if they enter with consent, officers may not detain persons who are on the premises unless they have reasonable suspicion of criminal activity

Seeking consent rather than obtaining a warrant can also serve to warn subjects of pending law enforcement action. The evidence may be destroyed or removed during the time that the warrant is obtained.

Necessary Conditions

For consent to be valid, the consent must be:

- *Voluntary*, and
- Obtained from a person with apparent authority or to give that consent

NOTE: If the consent is valid, the consenter has temporarily relinquished any expectation of privacy for the area or item to be searched.

NOTE: An unlawful detention invalidates a consent search.

Scope Of a Consent Search

Peace officers may search those places and things they reasonably believe the consenting person authorized them to search. As long as the search remains within the scope given, officers may seize any crime-related evidence which they discover.

If the consenting person expressly or implicitly restricts the search to certain places or things, officers must honor those restrictions. If the officers tell the consenting person what type of evidence they are searching for, the scope of the search must be limited to those places and things in which such evidence may reasonably be found.

Example: Consent to search inside a suitcase includes consent to look inside all the compartments of the suitcase.

Example: Consent to search the living room includes consent to look into small containers sitting on shelves and on tables within the room but not to enter any other rooms of the residence.

Example: Consent to search for documents within an office includes consent to look into file drawers as well as through a desk.

Example: Suspect consented to search of his vehicle, but not the backpack located in the trunk.

Voluntary Consent

Voluntary consent means an act of free will and not the result of duress or coercion. If consent is merely a submission to an assertion of authority or coercion, the consent is not voluntary. Any search under such conditions would be unlawful, and any item(s) seized would not be admitted as evidence at trial.

Co-Tenant/Parental Consent

When an occupant consents to a search, but a co-occupant who “is present at the scene ... expressly refuses to consent,” the co-occupant’s refusal “prevails, rendering the warrantless search unreasonable and invalid as to” him. This is because one occupant’s consent is not “good against another [occupant], standing at the door and expressly refusing consent.”

When the suspect is a minor, the officer generally can rely on the consent given by the parent over the objection of the minor.

Peace Officer Conduct

Peace officers may inadvertently undermine the voluntariness of consent by their conduct. Officers who seek consent must make it clear that they are *requesting* permission to search -- not demanding it.

The table below offers examples of peace officer actions and their possible influence on the voluntariness of consent.

Action	Consent may be considered <i>involuntary</i> if peace officers...
Show of physical force	<ul style="list-style-type: none">• Exhibit force while seeking consent (e.g., rest their hands on, or draw weapons).
Misrepresentation of authority	<ul style="list-style-type: none">• State or imply they have a legal right to conduct an immediate search.• Falsely state they have a warrant when they do not.• Request entry for a purpose other than to conduct a search.
Illegal seizure	<ul style="list-style-type: none">• Illegally detain or arrest the subject.
Verbal coercion	<ul style="list-style-type: none">• Verbally demand consent rather than request it.
Intimidating demeanor	<ul style="list-style-type: none">• Appear in large numbers.• Use a demanding tone of voice.• Act in an overly authoritative manner, etc.
Impairment or limitation of consent	<ul style="list-style-type: none">• Fail to recognize or acknowledge the consenting person may be:• Too young to understand the implications of the consent.• Severely under the influence of alcohol or drugs.• Mentally incapable of giving permission.• Overly distraught or too emotional to understand.

Express vs Implied Consent

Consent must be given in the form of some *affirmative act*, either as express consent or implied consent. The following table illustrates the differences between these two types of consent.

Express consent...	Implied consent...
Occurs when the consenting person clearly authorizes the search either orally or in writing.	Occurs when the consenting person authorizes the search by actions or behavior indicating that consent was given.
Requires no inference to supply the full meaning.	Must be reasonably inferred.
Examples: <ul style="list-style-type: none">• Verbal acknowledgment and approval (e.g., "Sure; go ahead")• Signing a consent form	Examples: <ul style="list-style-type: none">• Nodding approval• Stepping aside to allow entry

NOTE: Consent may not be inferred simply from a failure to object or from mere silence.

NOTE: Implied consent is usually more difficult to *prove* than express consent. Therefore, officers should make every effort to obtain *express* verbal or written consent before conducting a search.

Right To Refuse

The courts have ruled that it is *not legally* necessary for officers to advise potential consenters that they have a constitutional right to refuse consent of a warrantless search.

However, giving the consenting person such a warning is a strong positive factor indicating the voluntariness of the consent.

Authority to Consent

A consentor must have actual or apparent authority to consent to the search.

Problems may occur when a person consents to the search of property owned or possessed by another. The following table illustrates how the validity of a consent can vary, depending on the consentor's authority to waive the expectation of privacy.

Relationship	Consenter has authority if...	Consenter has no authority if...
Husband/wife Parent/child Roommates/co-occupants	There is joint access or control over an area or thing (e.g., kitchen, family room).	<ul style="list-style-type: none">• The item is clearly a personal effect of, or the area is under the sole authority of, the non-consenter (e.g., personal suitcase, toolbox, locked closet).• Co-occupant is present and objects to the search.
Landlord/tenant Motel owner/boarder	Consenter is landlord or owner who has regained exclusive possession of a rental property.	Consenter is landlord or owner, but the premises are still occupied by the tenant (e.g., apartment, motel room).
Employer/employee	There is common authority or control over the area or thing (e.g., unlocked file cabinets, open office spaces).	The item is clearly a personal effect of, or the area is under the sole authority of, the non-consenter (e.g., briefcase, purse, locked drawer).

Withdrawal of Consent

The person giving consent has the right to withdraw or limit that consent at any time during the search. Officers should not engage in activity that will limit the consenter's ability to withdraw consent or limit scope of consent (e.g., an officer moves a person to another room).

Consent can be withdrawn by:

- Expressly doing so (e.g., "I don't want you to search anything more")
- Making a statement (e.g., "I want you to leave now")
- Engaging in conduct that reasonably indicates that the consent is being withdrawn (e.g., blocking a doorway and saying, "I don't want you to go in there," or not handing over the keys)

Failure to Comply with Withdrawal

If officers ignore the withdrawal or limitation of consent, any evidence that is subsequently seized may be inadmissible at trial.

Examples

While questioning a man in his driveway, officers asked if they could look through the trunk of his vehicle. The man shrugged his shoulders and handed the officers the keys to the car's trunk. The officers properly took the man's actions as implied consent, took the keys, and opened the trunk to conduct the search.

While conducting the search of the garage, the consenter told officers they could not open the unlocked toolbox, which was located in the garage. The consenter can establish parameters during consent search to include/exclude specific items/locations.

Examples (Continued)

A college student who attended classes in the nearby university lived in the basement area of his parents' residence. His parents offered the area to him without rent to help offset the cost of tuition. His mother, who cleaned the area for her son and otherwise passed freely through the area to get to the laundry facilities, consented to a peace officer's request to enter the son's living space to search for stolen computer equipment. Since the mother had open access to the son's living area, and since the son did not pay rent, the mother had authority to consent to the search.

A woman left her locked briefcase and its key with her coworker. Later, the coworker gave an investigating officer permission to open the briefcase to search it. By giving the coworker the key, the owner had relinquished her expectation of privacy over to the coworker. Even though the possession may have been temporary, the coworker had the authority to give consent to the search.

EXIGENT CIRCUMSTANCE SEARCHES

Introduction

Peace officers may lawfully enter an area in which an individual has a reasonable expectation of privacy, when there is a *compelling need for official action* and no time to secure a warrant.

Necessary Conditions

Exigent circumstances means an emergency situation requiring swift action to prevent:

- Imminent danger to a person's life or safety
- Serious damage to property
- Imminent escape of a suspect
- Imminent destruction or removal of evidence

NOTE: Once inside, peace officers may do whatever is necessary to resolve the emergency, nothing more. Once the emergency has dissipated (no longer any imminent danger to life, property, etc.), a warrant may be needed for further searching.

NOTE: For additional information on exigent circumstance searches, refer to LD 9: Crimes Against Children.

Scope of a Search

Under exigent circumstances, the primary purpose of the officer's entry is to attend to the emergency situation. After entering the premises, officers may conduct a search only if it is reasonable to believe a search is necessary to secure the emergency.

Officers who are conducting a lawful search based on exigent circumstances may seize any item in **plain view** if there is probable cause to believe the item is contraband or evidence of a crime.

Exception to Knock and Notice

When exigent circumstances exist, peace officers are normally not required to comply with knock and notice procedures before entering.

Imminent Danger to Life

If an officer reasonably believes a *person* (victim or other person), inside an area that would be considered private *property*, may be injured or ill and in *immediate need* of help, the officer may enter the property without a warrant.

The following table illustrates a number of situations where there may be an imminent danger to life.

Emergency	A peace officer may enter without a warrant if the officer reasonably believes that...
Sick or injured person	<ul style="list-style-type: none">• There is a medical emergency where a person may be incapacitated.
Child abuse	<ul style="list-style-type: none">• A child inside the premises is <i>presently</i> being physically abused, or• A child is in immediate need of protection.
Violent assault	<ul style="list-style-type: none">• There are people inside the residence who constitute an imminent and serious threat to themselves or others.
Domestic violence	<ul style="list-style-type: none">• Entry is necessary to protect a victim by preventing ongoing or additional violence.

Imminent Danger to Property

If an officer reasonably believes there is a need to enter a private area in order to protect the *property* of the owner or occupant, the officer may enter without a warrant.

The following table illustrates situations where there may be an imminent danger to property.

Emergency	A peace officer may enter without a warrant if the officer reasonably believes that...
Burglary	<ul style="list-style-type: none">• The premises are presently being burglarized.
Other emergencies	<ul style="list-style-type: none">• The premises are on fire, or• There are dangerous chemicals or explosives on the premises which pose a danger to people or property.

Imminent Escape

It is lawful for peace officers to enter private property without a warrant in order to prevent the *escape* of a suspect, especially if the suspect is armed and dangerous or has just committed a violent felony.

The following table describes two types of exigent circumstance pursuits.

Type of Pursuit	A warrantless entry is permitted if...
Hot pursuit	<ul style="list-style-type: none">Officers attempt to detain or arrest the suspect in a public place, butThe suspect flees inside a private area. <p>NOTE: A misdemeanor offense will not, on its own, justify entry into a residence; there must be additional evidence of some exigency.</p>
Fresh pursuit	<ul style="list-style-type: none">There is no physical chase, butOfficers are quickly responding to information concerning the suspect's whereabouts, andThe officers reasonably believe the suspect's escape is imminent. <p>NOTE: Unlike entries under the hot pursuit doctrine, fresh pursuit has only been applied to fleeing felons.</p>

Destruction of Evidence

Peace officers may enter premises without a warrant or consent when there is immediate danger of destruction or removal of crime-related evidence.

NOTE: A mere suspicion that evidence will be destroyed does not amount to exigent circumstances. There must be *specific facts* that evidence will likely be destroyed or removed without intervention.

Re-Entry

Following the exigent circumstance, peace officers must vacate the premises within a reasonable amount of time and may not reenter unless they obtain a search warrant or consent.

Creating an Exigency

Peace officers may *not* use exigent circumstances as an excuse for a warrantless entry if they have *created* the emergency unnecessarily by their own conduct.

Exigent Circumstances Pertaining to Electronic Devices

If the officer, in good faith, believes that an emergency exists involving danger of death or serious physical injury to any person, he or she may access the electronic device information in a cell phone without a warrant. (*Penal Code Section 1546.1(c)(6)*)

Examples

Two officers were investigating a carjacking that occurred earlier in the day. When the officers arrested three of the known suspects outside of a residence, one of the suspects told the officers that the fourth suspect was inside the home. Entry into the residence by officers, without a warrant, was lawful to prevent the escape of the fourth suspect.

NOTE: The officers must be able to provide articulable facts explaining the exigency related to the entry into the home.

A commercial property was found unlocked and unattended. The officer entered the property to locate the name and phone number of the owner and to see if there were any signs of someone inside. While inside, the officer discovered contraband in plain view. The entry was legal because the officer was attempting to prevent damage or further damage to the property.

While responding to a neighbor's complaint of strange noises coming from a nearby apartment, officers found a trail of fresh blood in the hallway leading to the apartment door. When the officers started to announce themselves, they heard vague moaning sounds from inside. The officers reasonably suspected that someone inside the apartment was in need of immediate medical attention and entered the property without a warrant or consent.

SEARCHES INCIDENT TO ARREST

Introduction

When a suspect is lawfully arrested and taken into physical custody, a limited authority exists for peace officers to conduct a warrantless search of the suspect's person, also of the property and area within the suspect's immediate control.

Necessary Conditions

A search incident to arrest may be conducted when:

- Probable cause for a lawful arrest exists
- The suspect is taken into custody
- The search is contemporaneous with the arrest

NOTE: The search is justified by the custodial nature of the arrest, not by the nature or circumstances of the crime that lead to the arrest.

Scope of the Search

A search incident to a custodial arrest may include:

- A full search of the arrestee's person
- Containers on the arrestee's person
- The nearby physical area that was under the immediate control of the arrestee (sometimes referred to as "within arm's reach")

Custodial Arrest

To conduct a lawful search incident to arrest, the person must be taken into custody.

A **custodial arrest** is one in which the person will be transported to another location or facility, such as a station, jail, detox center, juvenile hall, or school.

A search incident to arrest is *not* permitted when the person is merely *cited and released*.

Contemporaneous Search

To be legal, the search must be **contemporaneous** with the arrest. That is, the search must be conducted:

- At or near the time of arrest, although either can precede the other
- At or near the place of the arrest
- While the arrestee is still on the scene

NOTE: If the search precedes the arrest, the officer must have probable cause to arrest at the time of the search.

The search can still be upheld as contemporaneous even if delayed somewhat, if the delay is reasonably necessary (e.g., for safety reasons), and the search is conducted *as soon after the arrest as practical*.

“Arm’s Reach” Rule

Peace officers may search any area that is or was reasonably within the arrestee’s control. This could include any area from which the arrestee may:

- Grab a weapon
- Obtain any item that could be used as a weapon
- Destroy evidence

NOTE: The fact that the arrestee has been handcuffed or otherwise immobilized does *not* eliminate or change the “arm’s reach” rule.

NOTE: It is improper to try to expand or enlarge the area of an arrestee’s immediate control by moving the arrestee (e.g., from one room to another) in order to enhance an officer’s ability to see objects in plain view.

Electronic Devices and Cell Phones

Devices providing access to large amounts of often personal data, such as cell phones and computers, may be seized incident to arrest, the contents of such devices may not be searched absent a search warrant, consent, exigent circumstances, or some other exception to the Fourth Amendment warrant requirement.

Examples

Two officers, who had exigent circumstances and probable cause, entered an auto service establishment without a warrant. They found the two suspects for whom they were searching inside and arrested them. The officers then conducted a warrantless search of the desk the suspects had been sitting behind and found cocaine and a handgun. The search was upheld since it was in an area in the suspect's immediate control.

Arresting officers had to use force to gain custody of an armed robbery suspect in his bedroom. The officers searched the area within 6-8 feet of the suspect and discovered two guns in a box at the foot of the bed. Searching an area that far away was lawful because it was within a reasonable lunging distance of the agitated suspect at the time of the arrest.

Protective Sweeps

A **protective sweep** is a brief search to look for individuals only. A protective sweep does not require probable cause to believe that officer safety is threatened, a reasonable suspicion is sufficient.

If peace officers are already lawfully inside or outside a house and have a specific factual basis for believing there may be other people inside who pose a danger to them, the officers can conduct a protective sweep.

Protective sweeps are limited to spaces *immediately adjoining* the area of an arrest:

- Where another person could be hiding
- From which an attack could be immediately launched

It is illegal to sweep into areas *beyond* those “immediately adjoining” the arrest location, unless the officer has reasonable suspicion, based on articulable facts, that there may be someone there who poses a danger to the officer.

Any contraband or crime-related evidence in plain view during a protective sweep may be seized.

NOTE: Obtaining a warrant to search for evidence is always preferable. A warrant would allow not only the seizure of an item in plain view, but also a further and more thorough search for similar or additional evidence that may be on the premises.

NOTE: It is improper to try to expand or enlarge the “plain view” or the immediate control area by moving the suspect from room to room. However, if the arrestee asks to go to another part of the premises, it is perfectly legal for the officer to accompany him or her, for security reasons, and whatever is observed in plain view may properly be seized.

PROBATION/PAROLE SEARCHES

Introduction

Under specific circumstances, peace officers may conduct warrantless searches of a person who is on probation, parole or post release community supervision (PRCS). Searchable probation, parole or PRCS status must be established prior to a search.

Probation

Probation is a *sentencing alternative* for a person convicted of a criminal offense and is granted at a judge's discretion. Rather than incarceration, the individual remains under the authority of the probation department. Probation may be formal (supervised) or informal (unsupervised).

An individual serving a period of probation must agree to certain conditions. These may include conditions such as:

- Getting a job
- Avoiding drugs and other criminal behavior
- Not traveling outside a limited area
- Submitting to periodic searches without a warrant, probable cause, or reasonable suspicion

Parole

Parole is a conditional release from a state prison which allows an individual to serve the remainder of a sentence outside of prison, which a person must serve on the "outside" after having completed the actual prison sentence.

PRCS

Post Release Community Supervision came as a result of Assembly Bill 109, also known as prison realignment. State inmates who have been convicted of non-violent, non-serious, and non-sexual crimes, regardless of previous convictions, are released from the California Department of Corrections and Rehabilitation and become the responsibility of local jurisdictions.

PRCS offenders have specific terms of their release and are monitored by designated officers to ensure compliance.

Necessary Conditions

Warrantless, suspicionless probation and parole searches are both reasonable under the Fourth Amendment, according to the California Supreme Court.

Probation Search Conditions	Parole Search Conditions	PRCS Search Conditions
Not every probation has a search condition, and not all search conditions are the same. However, assuming the probationer has a search condition permitting searches for “X” by peace officers, the search for “X” may be undertaken without any reasonable suspicion of criminal activity.	The officer must know about the parole conditions before the search. An officer may conduct a parole search without reasonable suspicion but cannot conduct a parole search for arbitrary, capricious or harassment reasons.	The officer must know about the PRCS search conditions before the search. An officer may conduct a PRCS search without reasonable suspicion but cannot conduct the search for arbitrary, capricious or harassment reasons.

NOTE: Probationers: Search of electronic devices or cell phones must be specifically listed in the probationer’s terms of probation. (*Penal Code Section 1546.1(c)(10)*)

NOTE: Parolees/PRCS: It is proper to search electronic devices or cell phones without a warrant. (*Penal Code Section 1546.1(c)(8) and (9)*)

Scope Of the Search

Parole search conditions permit a warrantless search of the parolee's person, residence, and any other property under their control (e.g., vehicle, backpack, etc.).

Probation search conditions depend on the specific terms of the probationer, which may be as broad as parole conditions.

PRCS search conditions permit a warrantless search of the PRCS offender's person, property, and any property under their control. Additional restrictions may be imposed upon the PRCS offender at the County level as well.

Therefore, officers should determine the scope of search conditions before they conduct a search.

Search Of a Residence

The following conditions apply when the location being searched is the residence of a probationer/parolee/PRCS offender.

	Conditions
Certainty	Although absolute certainty is <i>not required</i> , the officer must possess some specific information that reasonably indicates the residence is, in fact, the probationer's/parolee/PRCS offender's.
Knock and Notice	Officers must comply with all knock and notice requirements unless compliance is excused for good cause.
Joint Occupants	Officers who are conducting a lawful probation/parole/PRCS offender search need not obtain the consent of a joint occupant of the premises, nor will the objections of a joint occupant invalidate the search.
Rooms	Officers may search any rooms under a probationer/parole/PRCS offender's control, including any areas controlled jointly with other occupants of the residence.
Personal Property	Personal property may be searched when officers reasonably believe it is owned or controlled or jointly owned or controlled by the probation/parole/PRCS offender.
Denials	If the probationer/parolee/PRCS offender denies that they live in the residence or that personal property belongs to them (or if a joint occupant denies such), officers are <i>not required</i> to accept such denials. (A false denial might be expected when contraband is on the premises.)

Harassment

Probation/parole/PRCS searches must never be conducted for reasons unrelated to the rehabilitative, reformatory, or legitimate law enforcement purposes. A search is invalid if the reason it was undertaken was to *harass* the probationer/parolee/PRCS offender.

Searches may also be considered *harassment* if they:

- Occur too often
- Take place at an unreasonable hour
- Are unreasonably prolonged
- Demonstrate arbitrary or oppressive peace officer conduct
- Are undertaken with personal animosity toward the probationer/parolee

Notification – Probation/PRCS Searches

According to the California Supreme Court, notification of the individual's probation/PRCS officer is not required prior to a warrantless probation search as long as the search condition authorizes a search by *any law enforcement officer or any peace officer*.

However, if this specific language is not included in the search condition, officers must contact the probation/PRCS officer first. It will then be up to the probation officer to conduct the search or to authorize a peace officer to conduct the search.

If the search condition stipulates that the probationer must submit to a warrantless search *upon request or whenever requested*, officers must *contact* the probationer before conducting the search. However, the probationer need not be physically present at the time of the search.

Notification – Parole Searches

Notification to the individual's parole officer is not legally required prior to a warrantless parole search. However, the California Department of Corrections and Rehabilitation (CDCR) has *requested* notification prior to warrantless searches of a parolee's *residence or business*.

Examples

Officers investigating a number of residential break-ins went to the residence of a local gang member, who was on searchable probation, and searched for possible evidence. Since *stolen property* had been named as a searchable item as part of the search condition, the warrantless search was valid.

An officer investigating reported stolen batteries contacted the probation department to see if his suspect had a search condition. The department told the officer that the language authorized warrantless searches “by any law enforcement officer.” Based on this information, the officer went to the suspect’s residence and conducted a lawful search.

Learning Need

Although warrantless searches and seizures are presumptively illegal, when certain conditions are met, officers may lawfully search and seize evidence without a search warrant. For evidence to be admissible at trial, officers must have a clear understanding of the legal requirements for warrantless searches

Plain View Seizures [16.03.1]

When an officer sees an item in plain view, no search has taken place. The owner or possessor obviously has *no reasonable expectation of privacy* to items which are in plain view. Without an expectation of privacy, the owner or possessor has no Fourth Amendment protection.

Plain View Seizure Requirements [16.03.2]

Peace officers must still meet certain requirements before the item in plain sight may be legally *seized* as evidence. Peace officers must have:

- Probable cause the item is contraband or evidence of a crime
- A lawful right to be in the location
- Lawful access to the item

Probable Cause and Warrantless Searches [16.03.3]

The Fourth Amendment does not prohibit all searches, only those that are unreasonable. The courts have identified the following warrantless searches and seizures as reasonable and, therefore, legal.

- Cursory/frisks/pat search
- Consent searches
- Searches incident to exigent circumstances
- Searches incident to custodial arrest
- Probation/parole searches

Cursory/Frisk/Pat Search [16.03.4]

Limited to a frisk of the outer clothing, for weapons or potential weapons only.

Consent [16.03.5]

Those places and things the officer reasonably believes the consenting person authorized them to search.

Exigent Circumstances [16.03.6]

Peace officers may do whatever is necessary to resolve the emergency, but nothing more.

Incident To Custodial Arrest [16.03.7]

A full search of the arrestee's person, containers on the arrestee's person, and the nearby physical area that was under the immediate control of the arrestee may be conducted. When probable cause for a lawful arrest exists and the suspect is taken into custody, and the search is contemporaneous with the arrest.

Probation/Parole [16.03.8]

A search is limited to item(s) specified in actual search conditions. Such as, the probationer's person, their residence, and any other property under their control. No reasonable suspicion of criminal activity or of a probation/parole violation is required.

WORKBOOK LEARNING ACTIVITIES

Introduction

To help you review and apply the material covered in this chapter, a selection of learning activities has been included. No answers are provided. However, by referring to the appropriate text, you should be able to prepare a response.

Activity Questions

1. On patrol in a local park, officers pass a man stretched out on a blanket next to a large, open cooler filled with cans of beer. As officers pass the man, two children run up and ask, "Have any today?" The man waves them off. The officers continue past the man and from a distance, while he is still in sight, observe him with binoculars. He appears to be selling beer to two 10-year-old boys who approached moments before. Other children begin to filter over, some buy beer. Officers note that the man is placing money in a plastic bag in the cooler. Can officers seize the cooler without a warrant? Why or why not? What are the legal requirements for such a seizure?

2. At 1:00 a.m., in an area of town generally known for drug trafficking, two officers stop a car being driven with a broken taillight. As one of the officers approaches the car to ask for license and registration information, she notes that the occupants of the vehicle are five men ranging in ages from 20-30. One of the passengers appears intoxicated and shouts obscenities at the officer. Would the officers be justified in conducting a cursory/frisk/pat search before getting license and registration information? Explain your rationale. What areas might be covered in such a search? If one of the passengers is found to be carrying a handgun in his jacket pocket, what, if any, additional searches are justified? Why?
3. What are exigent circumstances? How do exigent circumstances justify a warrantless search?

4. Officers arrive at a residence at approximately 11:30 p.m. where a loud party is in progress. As they start up the front walk, they are met by a neighbor who says she thinks they have drugs at the party, though the officers ascertain that she has no actual evidence of this. The officers knock on the door and announce themselves. As the homeowner cracks the door, the officers ask him to turn down the music. The owner seems agitated and does not open the door further. The officers hear a party goer yell, "Get rid of it!" and two toilets flush almost simultaneously. What should the officers do next?

5. How do the rights of individuals on parole differ from those on probation in terms of being subject to warrantless searches?

6. An officer on routine patrol saw two people smoking rock cocaine through the open window of a townhouse. The officer went to the front door, identified himself, and requested entry. While the officer was waiting for a response, he heard sounds of a toilet flushing and suspected that the occupants were attempting to destroy possible evidence of a crime. Under the circumstances, does the officer have justification for forcing his way into the apartment without a warrant? Why or why not?

Chapter 4

Searches and Seizures Involving Motor Vehicles

OVERVIEW

Learning Need

The Fourth Amendment's protection against unreasonable searches and seizures extends to a person's vehicle and property inside the vehicle. However, the courts have created several exceptions to the Fourth Amendment's warrant requirement because of a motor vehicle's potential mobility and reduced expectation of privacy.

Learning Objectives

The chart below identifies the student learning objectives for this chapter.

After completing study of this chapter, the student will be able to:	Objective ID
<ul style="list-style-type: none">Recognize the scope and necessary conditions for conducting the following types of motor vehicle searches:<ul style="list-style-type: none">Probable cause searchesSeizures of items in plain viewProtective searchesConsent searchesSearches incident to custodial arrestInstrumentality searches	<ul style="list-style-type: none">16.04.116.04.216.04.316.04.416.04.516.04.6
<ul style="list-style-type: none">Recognize the scope and necessary conditions for conducting a vehicle inventory	<ul style="list-style-type: none">16.04.7

In This Chapter

This section focuses on lawful searches and seizures involving vehicles. Refer to the chart below for a specific topic.

Topic	See Page
Probable Cause Searches of Vehicles	4-3
Plain View Seizures from Vehicles	4-8
Protective Searches of Vehicles	4-10
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PROBABLE CAUSE SEARCHES OF VEHICLES

Introduction

The courts have created an exception to the warrant requirement when a motor vehicle is involved. They have determined that the risk of the vehicle being moved to a different location, in combination with the reduced expectation of privacy that people have in vehicles, justifies a warrantless search as long as the search is based on *probable cause* that the vehicle contains contraband or evidence of a crime.

Probable Cause Exception

If officers believe they have enough information to obtain a search warrant for a vehicle from a magistrate, it is legal for them to search the vehicle *without* a warrant.

Warrantless searches of vehicles based on the **probable cause exception** are also referred to as searches under the “automobile exception,” or the “vehicle exception,” to the usual warrant requirement.

NOTE: The probable cause exception applies not only to any vehicle which is mobile, but also to any vehicle which *reasonably appears* to be mobile even if, in fact, it is not.

NOTE: If the vehicle is in a place which has a reasonable expectation of privacy, such as a garage or curtilage (driveway), a warrant may be necessary to search (enter) the property (garage).

Necessary Conditions

The conditions required to justify a probable cause vehicle search are exactly the same as those necessary to obtain a search warrant.

For a search of a vehicle to be legal under the probable cause exception:

- The vehicle must have been lawfully stopped, or lawfully accessible to the officer
- The officers must have enough facts, knowledge, training, or experience to provide probable cause that the item they are seeking will be found inside the vehicle

Scope of the Search

The scope of a vehicle search based on probable cause depends on the item or object peace officers are searching for.

Officers may search any part of a motor vehicle, or anything inside the vehicle, as long as what they are searching for might *reasonably be located there*. This includes, but is not limited to:

- The passenger compartment
- The glove compartment
- Center console
- The hood
- The trunk
- Any closed personal containers (including locked containers)

Vehicles

Vehicle Code Section 415 defines a **motor vehicle** as a vehicle that is self-propelled. Examples of motor vehicles include, but are not limited to, the following:

- Automobiles
- Airplanes
- Buses
- Recreational vehicles
- Carts, etc.

NOTE: Self-propelled wheelchairs, invalid tricycles, or motorized quadri-cycles when operated by a person because of disability are not considered motor vehicles.

NOTE: Boats are searchable under the same rules as motor vehicles.

Motor Homes

A motor home is considered a motor vehicle when it is being used on a highway, or if it is capable of such use and is located in a place not regularly used for residential purposes.

Example: A motor home parked on the public street in front of a residence is considered a motor vehicle.

Probable Cause

Probable cause to search a vehicle means *exactly the same thing that it does in a search warrant context*.

Probable cause to search means there is enough credible information to provide a fair probability that the object the peace officers is looking for will be found at the place they want to search.

Time of Search

Under the probable cause exception, it is *not* necessary that the search of the vehicle take place contemporaneously with the vehicle stop (e.g., on the roadside at the time of the stop). Instead, officers may have the car towed away and conduct the search at a later time, even after it has been impounded and is in police custody, as long as they still have probable cause.

Closed Containers

If peace officers have probable cause to believe the item, they are looking for is inside a vehicle, they are entitled to open and search any closed, personal container within the vehicle which might *reasonably contain the item*. (This rule also applies to locked containers.)

Probable cause to search a container may be established through the officer's sight, smell or touch, or by the container's shape, design, or the manner in which it is being carried.

Examples

During a traffic stop for speeding, an officer noticed the smell of beer inside the vehicle. Although the driver performed a series of sobriety tests, the officer had probable cause to search the passenger compartment for open containers of alcohol.

Officers were investigating a residential burglary. A witness described the suspect vehicle as a recreational vehicle and provided a complete license plate number. The officers had knowledge that the owner of the recreational vehicle had an extensive criminal record, including theft violations. Officers found the recreational vehicle in a public parking area of an apartment complex. Officers had probable cause to search the recreational vehicle for items from the residential burglary.

Peace officers had probable cause to believe a person had stolen cash from an open cash register at a convenience store. The officers were justified in searching all areas of the person's vehicle where the cash might reasonably be located (i.e., the recesses of the car seats, the trunk, the pockets of a jacket on the back seat, etc.).

Officers located a social media photo showing a possible location of a stolen motorcycle. An officer went to a property and saw what he suspected to be the motorcycle under a tarp in the driveway next to the house, lifted the tarp and confirmed it was stolen using the license and VIN numbers. The search wasn't justified under the automobile exception, which doesn't allow warrantless entry into a home or its curtilage to access a vehicle.

PLAIN VIEW SEIZURES FROM VEHICLES

Introduction

Seizing crime-related evidence in an officer's plain view from a place the officer has a lawful right to be does not involve any type of search.

Requirements For Seizure

Peace officers must meet the same requirements for plain view seizures involving vehicles as they would for seizing an item within plain view anywhere else.

Peace officers must:

- Have probable cause to believe the item is crime-related
- Lawfully be in a location to observe the item
- Have lawful access to the item

Probable Cause

To seize evidence from a vehicle, peace officers must recognize the item as being crime-related or have probable cause to believe that it is. Such probable cause may be based upon information from reliable sources, the knowledge and training of the officers, plain smell, etc.

Lawful Observation and Access

Generally, it makes little difference if an officer observes the crime-related item from outside a vehicle or while the officer is lawfully inside the vehicle.

The area that can be observed from outside a vehicle (i.e., the passenger compartment) carries such a low expectation of privacy that officers may enter the vehicle to seize the property.

NOTE: The use of a flashlight or other reasonable sensory enhancement tool, either from outside the vehicle or after lawful entry, is permissible as long as the device allows the officer to see anything that would have been visible during daylight hours.

Example

A peace officer stopped a car for expired registration tags. From outside the vehicle, the officer observed an open and partially filled bottle of beer on the floor of the passenger compartment of the car. The officer ordered the driver from the car, seized the bottle of beer, and then conducted a search of the passenger compartment for more open containers of alcohol.

PROTECTIVE SEARCHES OF VEHICLES

Introduction

A **protective search of a vehicle** is a *limited* warrantless search of the passenger compartment of a vehicle for weapons.

Necessary Conditions

A protective vehicle search is permitted if:

- The driver or other occupant is being lawfully detained
- The officer reasonably believes, based on *specific facts*, that there may be a weapon (lawful or unlawful) or item that could be used as a weapon, inside the vehicle

Officers need only a *reasonable suspicion* that a weapon or potential weapon is in the vehicle. However, this suspicion must be based on specific facts or information.

Factor	Examples
Actions	<ul style="list-style-type: none">• Trying to hide something• Appearing overly nervous• Acting in a threatening manner
Prior knowledge	<ul style="list-style-type: none">• History of carrying weapons or violent behavior
Reason for detention	<ul style="list-style-type: none">• Stopped in order to investigate a serious, violent, or armed offense
Companions	<ul style="list-style-type: none">• Lawful search of companions revealed a weapon or potential weapon
Location	<ul style="list-style-type: none">• Stopped in an area known for violence, or where the officer is unlikely to receive immediate aid if attacked
Time of day/amount of light	<ul style="list-style-type: none">• Stopped during nighttime• Stopped in an area with little or no lighting
Ratio	<ul style="list-style-type: none">• Detainees outnumber officers

Scope Of Search

Like a cursory/frisk/pat search of a detained person, protective vehicle searches are allowed to prevent an unexpected assault on peace officers.

Officers may search:

- Only for weapons or potential weapons
- In the **passenger compartment** of the vehicle
- Where the occupant(s) of the vehicle would have reasonable access to a weapon or item that could be used as a weapon

Once the searching officer determines there are no weapons or potential weapons within the passenger compartment, the search must end.

NOTE: Officers should never assume there is only one weapon. If a weapon is discovered, the officer may seize it and continue to search for others even if there is no specific reason to believe there are additional weapons in the vehicle.

Plain View

While conducting a protective vehicle search, officers may seize any item in plain view if there is probable cause to believe it is contraband or evidence of a crime. Officers may also develop enough probable cause to continue searching the vehicle based on the probable cause exception to the warrant requirement.

Containers

During a protective vehicle search, if the officer comes across a container within the passenger compartment, the officer is entitled to seize it and open it only if it is reasonable to believe that it could be used as a weapon, or that it might contain a weapon.

Examples

After receiving notification of an *armed* assault within the area, officers stopped a vehicle containing occupants who roughly matched the description of the assailants. The officers ordered the driver and the passenger out of the car and conducted a limited protective search of the passenger compartment for weapons.

A man, known by the officer for previously carrying a concealed weapon, was ordered to step out of the car in which he was a passenger. During a cursory/frisk/pat search of the man, the officer found a handgun. Even though the man was able to produce documentation showing the possession of the weapon was legal, the officers were justified to conduct a limited protective search of the passenger compartment of the vehicle for additional weapons.

NOTE: If, while conducting the protective vehicle search of the passenger compartment, officers identified evidence which provided probable cause to believe there was contraband or evidence of a crime in the trunk, the officers could search the trunk based on the probable cause exception to the general warrant requirement.

CONSENT SEARCHES OF VEHICLES

Introduction

If peace officers obtain valid consent to search a vehicle and/or any item within the vehicle, the warrantless search will be upheld as legal.

Necessary Conditions

The conditions for searching a vehicle based on consent are the same as any other **consent search**.

Consent must be:

- *Voluntary*, and
- Obtained from a person with the authority (or apparent authority) to give that consent

NOTE: Peace officers are responsible for knowing their agency policy for consent searches.

Scope of Search

Peace officers may search only those areas of the vehicle they reasonably believe the consenting person authorized them to search. If the consenting person expressly or implicitly restricts certain areas of the vehicle or items within the vehicle, the officers must honor those restrictions.

Voluntary Consent During Vehicle Stops

For any consent obtained during a vehicle stop or detention, there may be a question of its *voluntariness*. A court will determine whether consent was truly voluntary based on the *totality of the circumstances*.

Although not required by law, voluntary consent *during* a lawful vehicle stop, or even *after* a vehicle detention has been concluded, will be easier for officers to prove if they:

- Obtained a signed consent-to-search form
- Captured the explicit or implied consent on in-car camera footage
- Captured the explicit or implied consent on body camera footage
- Captured the verbal consent on a department approved recording device
- Verbally inform the individuals in authority that they have a right to refuse consent

Closed Containers

Consent to search a particular area may or may not include searching any closed container within the area. If the container is locked the officer would need specific consent to open that container. Peace officers must clearly understand the scope of the consent being given.

Establishing ownership of an object within a vehicle is also particularly important since individuals who disclaim ownership may lack authority to grant permission to search it.

Individuals who deny ownership may also lack standing to challenge the validity of the search later in court. Therefore, peace officers should *always* ask if a container within a vehicle belongs to the person who is granting the permission to search the vehicle and include the answer in their report.

Examples

Officers who obtained voluntary consent to search a vehicle for drugs were entitled to look inside a closed paper bag on the front seat, because narcotics are often carried in similar containers.

SEARCHES OF VEHICLES INCIDENT TO CUSTODIAL ARREST

Introduction

When an officer makes a custodial arrest of a person in a vehicle, the officer may be able to conduct a warrantless search of the vehicle's *passenger compartment*.

Necessary Conditions

Officers may search the *passenger compartment* of a vehicle if they have made a valid custodial arrest of any occupant of the vehicle and:

- The officer has “reason to believe” that evidence relevant to the arrest offense could be found in the vehicle

NOTE: *Reason to believe* is different than *probable cause* to search. It requires a “reasonable possibility, not probability”.

NOTE: The search may be conducted before the occupant is actually placed under arrest as long as probable cause to arrest existed at the time of the search.

Scope of Search

No matter what the arrest is for, as long as the driver or occupant of a vehicle is taken into custody, peace officers may search:

If a recent occupant of a vehicle is arrested, and there is “reason to believe” evidence pertaining to the crime for which the suspect was arrested, is to be found in the vehicle, peace officers may search the *passenger compartment* of the vehicle.

NOTE: The trunk of a vehicle may not be searched incident to the arrest of an occupant of the vehicle.

Custodial Arrest

The arrest must be *custodial*, meaning the arrestee will be transported by law enforcement personnel to another location, such as a jail, detox facility, or school.

An arrest is not custodial, and therefore no search is allowed, if the arrestee is merely cited and released.

Establishing A Nexus to The Vehicle

It is immaterial whether the occupant was inside or outside the vehicle at the time of the arrest or when the search began.

If officers did not see the arrestee inside the vehicle, they may nevertheless consider the person to be an occupant of the vehicle if:

- The officers reasonably believe the arrestee was an occupant shortly before the arrest
- There was something else indicating a close association between the vehicle and the arrestee at the time of the arrest (e.g., the arrestee placed an object inside the vehicle just before the arrest)

Contemporaneous Nature of The Search

A search is deemed incident to an arrest only if it occurred:

- At or near the time of the arrest
- At or near the place of the arrest
- While the arrestee is still at the scene

On rare occasions, the contemporaneous requirement can be waived if it was reasonably *necessary*:

- To delay the search
- To conduct the search in another location
- To conduct the search after the arrestee was removed from the scene
- The search was conducted as soon *as it was practical to do so*

Examples

The driver of a vehicle was taken into custody for driving while under the influence of alcohol. While conducting a search of the vehicle, the officers opened and searched the belongings of a hitchhiker whom the driver had picked up prior to the vehicle stop. Even though the items did not belong to the arrestee, the search was legal because the items were in the passenger compartment of the vehicle.

Officers received a broadcast description of an armed robbery suspect and vehicle. The suspect vehicle was stopped and the driver, who matched the suspect description, was arrested. The suspect vehicle was searched incident to the suspect's arrests. The search was legal because the suspect was lawfully arrested and officers had reasonable suspicion to believe evidence of the robbery and/or weapon would be found in the vehicle.

A driver admitted to using Percocet and marijuana earlier in the day and was found to be driving under the influence. A search of the passenger compartment was lawful because it was logical and reasonable to expect that items related to alcohol and drug consumption, such as alcoholic beverage bottles or drug paraphernalia might be readily contained in the intoxicated driver's car.

SEARCHES OF VEHICLES AS INSTRUMENTALITIES

Introduction

When peace officers have probable cause to believe the *vehicle itself* constitutes evidence of a criminal act, they may seize the vehicle without a warrant and wait until later for an examination performed in accordance with sound scientific procedures.

Necessary Conditions

A vehicle may generally be deemed an instrumentality of a crime if:

- The crime was committed *inside* the vehicle
- The vehicle was the means by which the crime was committed (e.g., hit and run)

NOTE: A vehicle is *not* an instrumentality merely because it is used *during* the commission of a crime.

Obtaining A Warrant

Even though officers will have probable cause to search any vehicle which was used as an “instrumentality” of a crime, meaning that no search warrant is required, many agencies prefer to obtain a warrant before conducting a scientific examination of a vehicle.

Scope of Search

If the search is undertaken *without a warrant*, the scope will be determined by the nature of the evidence being sought. That is, officers may search any part of the vehicle where the object(s) they are looking for might reasonably be located.

If the search is undertaken *pursuant to a warrant*, the scope will be determined by the terms of the warrant.

Examples

A female victim was kidnapped and raped in the suspect's van. Peace officers later arrested the suspect at his residence and seized and impounded his vehicle. Three days later, the officers legally entered the van to conduct a scientific examination to search for blood and semen stains.

The vehicle of a man arrested for kidnaping a 10-year-old boy was seized and later searched for fingerprints and other evidence that the boy had been in the vehicle.

VEHICLE INVENTORIES

Introduction

A **vehicle inventory** is not a search for evidence or contraband. It is a procedure peace officers use to account for personal property in a vehicle that is being impounded or stored.

Necessary Conditions

To inventory a vehicle:

- The vehicle must be in the *lawful custody* of law enforcement
- The officer conducts the inventory pursuant to a *standardized agency policy*

Scope Of Search

The courts have made it clear that a standardized agency policy may be very broad regarding vehicle inventories, permitting examination of any area where valuable or dangerous items are commonly kept. This may include, but is not limited to:

- Under the seats
- The trunk
- Glove compartments
- Closed containers
- Consoles

Purpose of an inventory

A vehicle inventory should never be undertaken for the purpose of finding evidence or contraband, but rather only for *taking note of personal property*.

The purpose of a vehicle inventory is to protect:

- The property of a person whose vehicle has been impounded or stored
- The government agency from false claims of loss

If, *during the course of an inventory*, officers discover evidence of a crime or contraband, they may lawfully seize it.

Lawful Custody

An inventory may be conducted only after the vehicle has come into lawful custody for reasons other than solely for the purpose of conducting the inventory.

The decision to impound and/or inventory must be made in good faith for lawful reasons such as, but not limited to:

- The driver (sole occupant) is taken into custody
- The vehicle, involved in a traffic accident, cannot be driven
- The vehicle must be moved to protect it or its contents from theft or damage (parked in a high crime neighborhood)
- Circumstances listed in the Vehicle Code (e.g., vehicle as a traffic hazard, stolen vehicle, etc.)

NOTE: The driver should never be taken into custody on the pretext of searching for evidence or contraband, or to examine personal belongings that may be inside the vehicle.

Authority to Impound

Assuming the vehicle is lawfully in police custody, the officer always has legal authority to impound or store it and, therefore, to inventory it. However, depending on agency policy, there may be occasions where the officer may choose to release the vehicle to a validly licensed passenger or another person.

NOTE: Impound and storage authority found under *Vehicle Code Section 22651*.

Personal Possessions

If a vehicle is to be inventoried, but the driver or other occupant requests possession of some object from inside the vehicle (e.g., purse, clothing, briefcase, etc.), the searching officer may pat the item down for weapons for the officer's own safety before handing it over.

Whether or not the item still must be inventoried as an object that was in the vehicle at the time the vehicle was impounded or stored will depend on agency inventory procedures.

Standardized Procedures

Agency procedures for conducting a vehicle inventory will be considered sufficiently *standardized* as long as:

- The agency has an established routine
- All officers know about the routine
- All officers are supposed to follow the routine when conducting vehicle inventories

NOTE: Standardized procedures do not necessarily have to be reduced to writing as long as they are commonly known to all officers.

NOTE: All inventories should be documented even if nothing of value is found.

Officer Discretion

The courts have recognized that standardized procedures may leave some discretion in the hands of a field officer whether or not to open a given container. However, this discretion cannot be unlimited and must be based on concerns related to the purposes of an inventory.

Repossessed Vehicles

If a licensed repossession agency has already repossessed a vehicle and completed the statutorily required inventory, peace officers may examine and seize inventoried items without a warrant if they have reason to believe the items are connected to a crime being investigated.

Examples

An officer impounded a vehicle because the driver, also the sole occupant, had no valid driver's license. While waiting for the tow truck to impound the vehicle, the officer conducted an inventory and discovered illegal narcotics in the glove compartment. The officer lawfully seized the narcotics as evidence and placed the driver under arrest for possession of an illegal controlled substance.

An officer conducted an inventory of a vehicle, following the DUI arrest of the driver and sole occupant of the vehicle, and found a backpack behind the front seat. Inside the backpack, the officer found a nylon bag containing metal canisters with drug paraphernalia and cocaine inside the canisters. The officer also found cash sealed in an envelope that was located in a side pocket of the backpack. Discovery and seizure of all these items was legal.

Learning Need

The Fourth Amendment's protection against unreasonable searches and seizures extends to a person's vehicle and property inside the vehicle. However, the courts have created several exceptions to the Fourth Amendment's warrant requirement because of a motor vehicle's potential mobility and reduced expectation of privacy.

Probable Cause [16.04.1]

Officers may conditionally search any part of a motor vehicle, or anything inside the vehicle, as long as what they are searching for might reasonably be located there.

Plain View Seizures [16.04.2]

Those items officers believe to be crime-related. Officers must have probable cause to believe the item is crime-related, lawfully be in a location to observe the item, and have lawful access to the item.

Protective Searches [16.04.3]

Officers may conditionally search only for weapons or potential weapons in the *passenger compartment* of the vehicle where the occupant(s) would have reasonable access to the weapon or item that could be used as a weapon.

Consent Searches [16.04.4]

Only those areas of the vehicle the officers reasonably believe the consenting person authorized them to search. Consent must be *voluntary*. The person giving consent must have *authority* to give that consent.

Searches Incident to Custodial Arrest [16.04.5]

There must be a valid custodial arrest of any occupant of the vehicle before the search can take place. The search must be done contemporaneously with the arrest when the peace officer has reason to believe evidence of a crime may be found in the vehicle.

Instrumentality Searches [16.04.6]

Instrumentality searches are limited to the areas where the evidence sought might reasonably be located or, if a warrant was obtained, to the areas specified in the search warrant. The crime must be committed *inside* the vehicle, or the vehicle is the means by which the crime was committed.

Vehicle Inventories [16.04.7]

The vehicle must be in the *lawful custody* of law enforcement before the inventory can take place. The inventory must be conducted pursuant to *standardized agency policy* or regulations.

WORKBOOK LEARNING ACTIVITIES

Introduction

To help you review and apply the material covered in this chapter, a selection of learning activities has been included. No answers are provided. However, by referring to the appropriate text, you should be able to prepare a response.

Activity Questions

1. An officer stops a car for speeding. The officer approaches the car and requests the driver's license and registration. As the driver of the vehicle hands the officer the items, the officer sees through the open window a Ziploc bag containing two smaller Ziploc baggies with a white rocklike substance, and a glass smoking pipe in the open storage compartment near the console. The officer asks the driver and the passenger to step from the car, and the officer seizes the bag. Did the officer, up to this point, need a warrant to support his actions? Explain? Would further search of the vehicle without a warrant be justified? If so, to what extent? Explain.

2. Under what circumstances may a vehicle be considered an instrumentality of a crime? Give an example for each circumstance you list.

3. Peace officers have a street corner under surveillance where a suspect is thought to drive by and deal heroin from his car. Using binoculars, officers see the suspected dealer (the driver) arrive and exchange small foil packages for cash with several teens through an open car window. Moments later, the suspect drives away. The officers follow and stop the vehicle to conduct a probable cause search for drugs and cash. The occupants of the car are the driver and one female passenger. In this context, what areas of the car or occupants can be searched? As one officer moves to search the purse of the female passenger, she protests saying that it is personal, private property. Is the officer justified in proceeding? Explain your answer.

4. The driver of a vehicle is placed under custodial arrest for driving under the influence after administration of roadside sobriety tests and a breath test. Can the trunk of the car be searched incident to the arrest? Would this differ if the driver had mentioned she was just taking a case of beer to a party, and the case is not found in the passenger compartment?

Chapter 5

Searches and Seizures Involving Bodily Intrusions

OVERVIEW

Learning Need

Peace officers must recognize when a search or the seizure of evidence involves intrusion into a subject's body, special care must be taken to balance the subject's reasonable expectation of privacy under the Fourth Amendment against the government's need to collect evidence.

Learning Objectives

The chart below identifies the student learning objectives for this chapter.

After completing study of this chapter, the student will be able to:	Objective ID
<ul style="list-style-type: none">Recognize the legal framework establishing a peace officer's authority to seize physical evidence from a subject's body:<ul style="list-style-type: none">With a warrantWithout a warrant	16.05.1 16.05.2
<ul style="list-style-type: none">Recognize conditions under which a peace officer may use reasonable force to prevent a subject from swallowing or attempting to swallow evidence	16.05.3
<ul style="list-style-type: none">Recognize the conditions necessary for legally obtaining blood samples	16.05.5
<ul style="list-style-type: none">Recognize the conditions for legally obtaining the following nonintrusive bodily evidence:<ul style="list-style-type: none">FingerprintsHandwriting samples	16.05.6 16.05.7

In This Chapter

This section focuses on search and seizure issues involving bodily intrusions. Refer to the chart below for a specific topic.

Topic	See Page
Warrant Requirement for Bodily Intrusion Searches and Seizures	5-3
Warrantless Bodily Intrusion Searches and Seizures	5-6
Use of Force During Bodily Intrusion Searches and Seizures	5-9
Specific Circumstances	5-11
Chapter Synopsis	5-13
Workbook Learning Activities	5-15

WARRANT REQUIREMENT FOR BODILY INTRUSION SEARCHES AND SEIZURES

Introduction

Understandably, a person's reasonable expectation of privacy over their own body is *very high*. Because of this, a *warrant will usually be required to enter a person's body* to search for and seize evidence.

Fourth Amendment Protection

The Fourth Amendment protection against unreasonable searches and seizures is violated when a legitimate expectation of privacy has been infringed. This expectation applies not only to a suspect's property or possessions, but also to the suspect's person.

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the persons or things to be seized.

Fifth Amendment Protection

No person has the legal right to withhold or destroy physical evidence, even if that evidence is located on or inside one's person. The Fifth Amendment protection against self-incrimination only protects what a person may *say*, not any physical evidence that person may *possess*.

Express Wording

Wording authorizing the search of a person's "home, car, *and person*" does not authorize them to enter the person's body. A warrant to conduct a bodily intrusion search must contain exact wording that *expressly permits* any type of bodily intrusion, such as collecting a blood sample.

Probable Cause Plus

As in any other warrant procedure, peace officers must show probable cause to search within their affidavit to obtain a warrant. That is, there must be enough credible information to provide a fair probability that the search will result in the discovery of evidence of a crime.

But, in addition to probable cause, the courts also require that the more intense, unusual, prolonged, uncomfortable, unsafe, or undignified the procedure contemplated, the greater the showing for the procedure's necessity must be. This additional show of need is often referred to as probable cause plus.

Additional Requirements

Before issuing a search warrant to enter a person's body, the court will also address a number of factors regarding the necessity and safety of the search itself. The following table identifies these additional factors.

Factor	Consideration
Method used	What is the likelihood this type of search will result in the discovery of the evidence sought?
Seriousness of the offense	Does the nature of the offense justify the infringement on the person's privacy and dignity?
Importance of the evidence to the investigation	Is this particular evidence absolutely necessary to the investigation, or is it sought merely to corroborate other existing evidence?
Existence of alternate means	Are there any other less intrusive methods or means of obtaining the same evidence?
Safety and intrusiveness	Will the method or extent of the proposed intrusion: <ul style="list-style-type: none">• Threaten the individual's safety or health?• Be conducted in accordance with accepted medical practices?• Involve unusual or untested procedures?• Result in psychological harm to the individual?

Examples

A man was suspected of assaulting the victim with a knife. Detectives were granted a court order allowing them to obtain a blood sample from the suspect after they were able to show that the suspect had been identified by a witness, that there was blood at the scene that may have been the assailant's, and that the suspect would be taken to a facility where the blood would be drawn by medical personnel in accordance with accepted medical practices.

NOTE: When a warrant is sought to obtain a blood sample, the "probable cause *plus*" requirement is almost non-existent, since taking blood involves such a minimal intrusion and is so routine in our society. Accordingly, the warrant will be sufficient if it shows (1) probable cause that the test results will show evidence of a crime, and (2) that the removal of blood will be conducted by trained medical personnel in accordance with accepted medical practices.

WARRANTLESS BODILY INTRUSION SEARCHES AND SEIZURES

Introduction

Under certain conditions, evidence may be taken from a suspect's body *without* a search warrant.

Consent

Peace officers may seize evidence from a suspect's person if they have obtained **valid consent** from that person to do so, and if the search is not considered unreasonably intrusive.

Implied Consent

A person who drives a motor vehicle in California has given **implied consent** for chemical testing of their blood or breath.

Vehicle Code Section 23612 states that persons have given implied consent if they drive a motor vehicle and are lawfully arrested for being under the influence of drugs and/or alcohol.

Implied consent does not permit officers to forcibly extract a sample of blood from a suspect. Therefore, if a suspect refuses to comply with the law, blood may be forcibly extracted only if

- Exigent circumstances exist – other than the natural dissipation of blood alcohol – that are sufficient to justify the forcible procedure;
- The suspect has search terms that authorize a forcible blood draw; or
- Officers secure a search warrant pursuant to *Penal Code Section 1524(a)(13)*.

Refusal to comply with the implied consent law may result in administrative consequences such as suspension or revocation of driving privileges. However certain criminal consequences such as a fine or mandatory imprisonment if convicted, may not be imposed only for refusal to submit to a blood test.

Implied Consent (Continued)

When requesting a blood test, officers may tell the suspect about the administrative penalties but must be careful not to tell the suspect that refusing the blood test will result in additional criminal penalties.

The rule is different for a breath test. A suspect has no right to refuse a breath test. Officers may tell a suspect that refusing a breath test could result in additional criminal penalties. But, officers must clearly articulate that the suspect was offered the choice of a breath test and that the suspect refused the breath test.

Incident to Arrest

Under certain circumstances, seizing evidence from a suspect's person may be done without a warrant, incident to an arrest. The requirements for such a seizure are identified in the following table.

To search for and seize evidence from a suspect's body without a warrant, peace officers <i>must</i> have...	Explanation
Probable cause to arrest.	The officer must be aware of facts that constitute probable cause to arrest.
Probable cause to search.	The officer must reasonably believe that the search will result in the discovery of evidence of a crime.
Exigent circumstances.	It must be reasonable to believe that evidence will be lost or destroyed if the officer waits to obtain a warrant.
A need that outweighs the intrusiveness.	The need for the evidence must outweigh the intrusive nature of the search and any foreseeable danger.

Exigent Circumstances

The existence of exigent circumstances may depend on the stability of the evidence being sought. Officers may seize evidence from a person's body if it reasonably appears the evidence will be lost or destroyed if the officers wait to obtain a warrant.

Evidence is considered to be either **stable evidence** or **evanescent evidence**. The following table further clarifies the two levels of evidence stability.

Stable Evidence	Evanescent Evidence
Evidence that will <i>not change</i> over time.	Evidence that <i>will change</i> or be lost over time.
Example: <ul style="list-style-type: none">Blood samples for routine tests, such as typing or DNA	Examples: <ul style="list-style-type: none">Blood samples to test for drugs or alcohol levelsScrapings from under a suspect's fingernails

Examples

Officers with probable cause to believe a suspect committed a murder, took scrapings for analysis from under the suspect's fingernails. The warrantless seizure was considered reasonable, both because the intrusion was minor and because the evidence was easily destructible.

While investigating a traffic fatality, officers followed vehicle tire marks to an apartment where they located the vehicle from the scene. Officers observed an unconscious man in the drivers seat and smelled a strong alcoholic odor emanating from the man. Placing the man in custody on scene, officers had an ambulance transport to the hospital. Doctors determined the man needed emergency surgery, creating a small window of time to obtain a blood sample. Due to the exigency of having a small window of opportunity, time, and evanescence of evidence officers obtained the warrantless blood sample (*Missouri v. McNeely*).

USE OF FORCE DURING BODILY INTRUSION SEARCHES AND SEIZURES

Introduction

If a person forcibly resists the lawful seizure of evidence from his/her body, officers may use reasonable force to carry out the search and seizure.

Level of Force

Officers may use only that degree of force that is necessary to overcome the person's resistance and recover the evidence. Officers may not use unreasonable force to recover evidence.

As a general rule, no bodily intrusion is permissible if the force necessary to do it would *shock the conscience*.

Preventing a Suspect from Swallowing Evidence

If officers have probable cause to believe there is evidence in a person's mouth, they may use reasonable force to remove it, or to prevent the person from swallowing it.

If the substance is life-threatening, and you are seeking to save a life rather than solely to prevent the destruction of evidence, the exigencies are greater, and courts are more likely to approve whatever reasonable force was necessary to retrieve the object.

NOTE: Officers should be fully aware of their own department policies and procedures in this area.

Swallowed Evidence

If the person has swallowed the suspected evidence or contraband, peace officers have several options.

- Detain the suspect under controlled conditions and wait until the evidence naturally passes through the suspect's system, or
- If a doctor declares the suspect's life is in danger or the suspect is at risk for serious bodily injury then the suspect's stomach can be pumped or an emetic can be administered to induce vomiting, or
- The suspect may give consent to a stomach pump or emetic, but it should occur under the supervision of a doctor, or

In all other circumstances it should be assumed that a search warrant would be required to pump a suspect's stomach or administer an emetic to induce vomiting for the recovery of evidence.

Documentation

The manner in which officers describe their conduct in incident or arrest reports may significantly affect the admissibility of any evidence recovered through the application of physical force. Officers must present enough information to show that their actions were necessary and that the amount of force was reasonable under the totality of the circumstances.

Examples

When an officer asked a female suspect her name, he immediately noted that she had difficulty speaking and observed balloons normally used to contain heroin inside her mouth. The officer reached inside the suspect's mouth and retrieved the evidence before the suspect could swallow it.

After a suspect placed narcotics in his mouth in an attempt to swallow them, an officer applied a hold to the suspect's neck for approximately 10 seconds, while simultaneously ordering the suspect to spit out the evidence. The officer's actions were considered reasonable after the officer noted that, during the application of the hold, the suspect was able to breathe and speak, because the suspect continued to shout profanities at the officer.

SPECIFIC CIRCUMSTANCES

Introduction

Peace officers cannot obtain evidence such as blood samples or fingerprints at random. At the same time, individuals cannot prevent officers from lawfully gathering evidence.

Blood Samples

The most common type of bodily intrusion authorized by a warrant is the seizure of a person's blood for testing. Blood samples, obtained in a medically approved manner, are considered minimally intrusive. If a warrant is sought, it does not require a detailed explanation of need. Instead, because taking blood involves such a minimal intrusion and is so routine in society today, the affidavit must demonstrate only:

- Probable cause that the test results will show evidence of a crime
- The removal will be conducted by trained medical personnel in accordance with accepted medical practices

If blood is going to be taken without a warrant or consent, officers must have, in addition to probable cause to arrest and probable cause to search, exigent circumstances, which typically exist because of the evanescent nature of the evidence.

The evanescent nature of the evidence is no longer a sufficient circumstance, by itself, to justify a forcible blood draw. Instead, additional exigent circumstances must exist that are sufficient to justify the forcible procedure.

Assuming these conditions are met, blood may be taken, even in situations where the suspect is unconscious, or where the officers must apply reasonable force.

NOTE: Subjects' failure to participate in tests they have no legal right to refuse may be used as evidence of consciousness of guilt.

NOTE: Officers should be fully aware of their agency's own policies and procedures in this area.

Buccal Swabs

If the need arises to obtain a DNA sample from a suspect, person of interest, or a third party, a peace officer may ask for consent from the individual or obtain a search warrant to complete the collection. Taking a Buccal swab is less invasive than a blood draw and involves using a cotton swab to collect cheek cells from the inside of the mouth.

Fingerprints

Peace officers may obtain fingerprint samples from a person if they have that person's consent or probable cause to believe the person was involved in criminal activity.

If the person has been placed under arrest, the person has no legal right to refuse a fingerprint examination.

Officers may use a reasonable amount of force to obtain the fingerprints of a person who refuses to cooperate. However, fingerprints taken by force are often smeared or incomplete and are seldom useful.

Handwriting Samples

Handwriting samples obtained by peace officers are admissible as evidence. The refusal to give a handwriting sample may be commented upon later at a person's trial as consciousness of guilt.

It is impractical to physically force a person to provide handwriting samples. If a person refuses to willingly provide handwriting samples, a court may order them to provide one or be held in contempt-of-court.

Voice Evidence

A person has no legal right to refuse to give voice evidence. Although a person can not be forced to provide a vocal sample, refusal to do so can later be commented on at trial for the purpose of showing consciousness of guilt.

Learning Need

Peace officers must recognize when a search or the seizure of evidence involves intrusion into a subject's body, special care must be taken to balance the subject's reasonable expectation of privacy under the Fourth Amendment against the government's need to collect evidence.

Warrant Body Searches [16.05.1]

Peace officers must show probable cause in order to obtain a warrant allowing bodily intrusion searches. This means that in addition to the usual probable cause to search, the courts will also require that the more intense, unusual, prolonged, uncomfortable, unsafe, or undignified the procedure contemplated, the greater the showing for the procedure's necessity must be.

Warrantless Body Searches [16.05.2]

Unless officers have valid consent, they may seize evidence from a suspect's body without a warrant only if they have:

- Probable cause to arrest
- Probable cause to search
- Exigent circumstances
- A need that outweighs the intrusiveness

Use of Reasonable Force [16.05.3]

Officers may not use unreasonable force to recover evidence. No bodily intrusion is permissible if the force necessary to do it would *shock the conscience*. Officers may use only that degree of force necessary to overcome the suspect's resistance and recover the evidence.

Blood Samples [16.05.5]

To obtain a warrant allowing the seizure of a person's blood, peace officers must demonstrate:

- Probable cause that the test results will show evidence of a crime
- The removal will be conducted by trained medical personnel in accordance with accepted medical practices

Fingerprints [16.05.6]

Peace officers may obtain fingerprint samples from a person if they have that person's consent or probable cause to believe the person was involved in criminal activity. If the person has been placed under arrest, the arrestee has no legal right to refuse a fingerprint examination.

Handwriting Samples [16.05.7]

Peace officers may obtain handwriting samples from a person if they have that person's consent or probable cause to believe the person was involved in criminal activity. It is impractical to physically force suspects to provide handwriting samples. If suspects refuse to willingly provide handwriting samples, a court may order them to do so.

WORKBOOK LEARNING ACTIVITIES

Introduction

To help you review and apply the material covered in this chapter, a selection of learning activities has been included. No answers are provided. However, by referring to the appropriate text, you should be able to prepare a response.

Activity Questions

1. During an attempted rape, the victim scratches the assailant's arm, leaving blood and skin residue from the attacker under her nails. Since the accused assailant is an acquaintance of the victim, the suspect is arrested within a few hours of the report. The suspect has a scratch on his forearm consistent with the victim's description. Officers desire a warrant to obtain blood and skin scraping samples from the suspect, who will not offer them voluntarily. Explain how the need for this evidence meets or does not meet the considerations of "probable cause plus."
2. Officers respond to a domestic disturbance call on a Sunday night and discover an approximately 30-year-old man attempting to break down a door to reach a screaming woman and child. As officers try to restrain him, he exhibits almost no awareness of pain. The suspect bites one of the officers, drawing blood. He is finally subdued but continues to fight against handcuffs. Do officers have grounds for a warrantless blood test to check for what they suspect is PCP? Why or why not?

3. Why aren't officers required to obtain a warrant for chemical testing on a licensed California driver arrested after running a red light and suspected of driving under the influence? Can officers have this test performed even if the person refuses?

Chapter 6

Identification Procedures

OVERVIEW

Learning Need

Peace officers must be aware of the due process rights that protect against impermissible suggestiveness when conducting any procedure involving a subject's identification.

Learning Objectives

The chart below identifies the student learning objectives for this chapter.

After completing study of this chapter, the student will be able to:	Objective ID
<ul style="list-style-type: none">Identify the importance of a peace officer's neutral role during an identification procedure	16.06.1
<ul style="list-style-type: none">Identify officer actions before, during, and after an identification procedure to prevent impermissible law enforcement suggestiveness when conducting a:<ul style="list-style-type: none">Field show-upPhotographic spreadCustodial lineup	16.06.2 16.06.3 16.06.4

In This Chapter

This section focuses on procedures to allow the fair identification of perpetrators by victims or witnesses. Refer to the chart below for a specific topic.

Topic	See Page
Introduction to Identification Procedures	6-3
Field Show-ups	6-6
Photographic Spreads	6-8
Custodial Lineups	6-10
Chapter Synopsis	6-12
Workbook Learning Activities	6-13

INTRODUCTION TO IDENTIFICATION PROCEDURES

Introduction

The search for a perpetrator of a crime may include asking a victim or witness to *identify* a suspect by viewing a number of individuals in person or through photographs. Once a proper identification has been made, the suspect may be seized (arrested).

Purpose

The purpose of any identification procedure is to confirm or eliminate a person as the actual perpetrator.

Undue Influence

Because it is a violation of a defendant's constitutional right to due process to be convicted on the basis of an unduly suggestive identification process, peace officers must not *suggest in any way* to the victim or witness that a person to be observed during an identification process committed the crime.

Indeed, peace officers must be very careful to avoid any conduct *before, during, and after* the identification process which might be ruled suggestive. Nothing should be said that might influence the victim or witness, including prior contacts with law enforcement or prior arrests.

General Identification Procedures

Officers should not do anything that suggests or could be interpreted as suggesting which person to select during any type of identification procedure. The following table summarizes recommended actions or behaviors to aid peace officers in avoiding any form of influence before, during, and after an identification process.

Peace officers should ALWAYS ...	Peace officers should NEVER ...
Obtain as detailed and complete a description of the suspect as possible from the victim or witness as close in time to the incident as possible <i>before</i> any identification process. Separate all victims and witnesses in order to obtain independent descriptions.	Make suggestions, lead, or prompt victims or witnesses to give a description they do not mean to give.
Tell the victims or witnesses that: <ul style="list-style-type: none">• The person who committed the crime may or may <u>not</u> be among those present.• The person should not be compelled to make an identification.	Tell the witness or victim that: <ul style="list-style-type: none">• The person who committed the crime has been caught,• The victim's property or other evidence was found in the suspect's possession, or• The suspect has made incriminating statements.
Maintain an appearance of neutrality before, during, and after the actual viewing. Do not indicate if their choice, if made, was correct or incorrect.	Say anything about a suspect to the victim or witness before, during, or after the actual viewing. including prior contacts or arrests.
Separate all victims and/or witnesses both before, during, and after the identification process.	Allow multiple victims or witnesses to: <ul style="list-style-type: none">• Talk together about the identification, or• View an identification process at the same time.

Absolute Certainty

A victim or witness will rarely say that they are *100 percent certain* about their identification of a suspect.

If peace officers feel victims or witnesses are certain about their identification, they may ask for confirmation. However, peace officers should never ask a victim or witness to state on a scale of 1-10 or as a percentage how sure they are that they are certain. Any identification presented as a scale may give a juror a *reasonable doubt* about a defendant's guilt.

If the suspect is identified, officers will immediately inquire as to the victim or witness confidence level in the accuracy of the identification. Officers shall not validate or invalidate the victim or witness identification.

Documentation

Everything that occurs during the identification process should be noted in the peace officer's report. This includes:

- A verbatim account of what the victim or witness said as to the identification procedure
- A description of the victim's or witness' response to viewing the suspect

An electronic recording device, including in-car camera systems or body worn cameras, shall capture all audio and visual recordings as they relate to the identification procedures. If it is not feasible to make both an audio and visual recording, audio recording alone may be used. In that case, the investigator shall state, in writing, why the video recording was not feasible.

Introduction

A **field show-up** is the viewing of a possible suspect by the victim or witness that commonly occurs in the field shortly after a crime has been committed.

Timing

A show-up is appropriate only if it can be done *a short time after the crime* has taken place.

The advantages of this short time lapse include:

- The victim's or witness' fresh memory of the perpetrator and events
- The immediate release of an innocent subject
- The continuation of a search while the trail is still fresh

Location

The general rule is that an officer who detains a subject pending a show-up should *not move the subject* to another location but rather should transport the victim or witness to the subject.

There are three exceptions to this general rule.

- The subject clearly and voluntarily consents to being moved
- Independent probable cause exists to arrest the subject and take the subject into custody
- It is very impractical to transport a witness to a possible suspect because:
 - The victim or witness is too injured to be moved
 - The availability of transporting officers is limited, and the wait would create a greater intrusion on the subject's freedom than transporting the subject

Legal Representation

Since the detention of a subject for the purpose of identification is not considered full custody, the subject is not entitled to have an attorney present at the time of the in-field show-up.

Searches

A full search of the detained subject, or any search of the subject's vehicle, should be avoided until after there has been a positive identification, or unless the subject has consented to the search.

Officers may conduct a cursory/frisk/pat search of a detained subject prior to a field show-up only if there are specific reasons to believe the subject is armed or dangerous.

Implications Of Custody

If at all possible, officers should avoid any indication that the subject has been arrested and, therefore, perceived as *guilty* by law enforcement authorities.

Unless there is a reasonable threat to officer safety, reduce the inherent suggestiveness of implied custody by displaying the suspect outside the law enforcement vehicle and without handcuffs or other forms of restraint.

Only one suspect should be shown to the victim or witness at a time.

Examples

A witness observed a robber for 15 minutes from a close distance during the crime. The initial description offered by the witness matched the description of a suspect. A field show-up took place within 20 minutes at the suspect's motel, and the witness confirmed the identity of the suspect. Under these conditions, the identification procedure was upheld.

A suspect agreed to be transported to the location of the witness if his companion could come along and if the officer would bring him back afterwards. The officer consented to the suspect's terms, and the field show-up was upheld.

PHOTOGRAPHIC SPREADS

Introduction

A **photographic spread** (also known as a photographic lineup) is an identification procedure in which the victim or witness to a crime is asked to look at a number of photographs in an attempt to identify the suspect.

Timing

Identification by means of a photographic spread does not have to take place within a short time of the crime, as a field show-up does, but should nevertheless take place while the victim's or witness' memory is still fresh.

Location

A photographic spread may be used when the identity of the suspect is known or not known. Since there is no intrusion on a suspect's time or privacy, the photographic spread identification process can take place at any location.

Legal Representation

Since there is no form of custody involved, the suspect is not entitled to have an attorney present at the time of the identification process.

Recommended Identification Procedures

The following table identifies recommended procedures to aid in the identification of a suspect by using a photographic spread.

	Recommended Procedures
Preparation	<ul style="list-style-type: none">• When constructing a photographic lineup, an officer who will not be conducting the identification procedure should create the identification line up.• Use a photograph of the suspect that best resembles their appearance at the time the offense was committed; do not make the photo stand out.• Use all color or all black and white photographs; try to ensure all background colors are the same.• Try to use photographs that are all the same approximate overall size and depict the same approximate shots of the suspect (e.g., all close-ups; all DMV photos, all booking photos).• Use photographs of suspects of the same sex, race, and similar facial characteristics. The fillers should generally represent the victim or witness' description of the suspect.• If possible, use at least six photographs in the spread. Fewer than five photographs may make the selection <i>impermissibly suggestive</i> by limiting the options.• Record the names, dates of birth, and other identifying information assigned to each photograph separately.• Cover all identifying information on all photographs (e.g., booking numbers, names, prior arrests, etc.)

Recommended Identification Procedures (Continued)

	Recommended Procedures
Administration	<ul style="list-style-type: none">• The administering officer shall use “blind administration (the officer does not know the identity of the suspect)” or “blinded administration (the officer may know who the suspect is but does not know the location of their photo).” If a form of blind administration is not used, the investigating officer must state in writing the reason why.• If there are two or more suspects to be identified, use a different photographic spread to identify each suspect; only one suspect can be used in a line up.• The victim or witness should be given a verbal or written admonition regarding the identification procedure.• Instruct the victim or witness to look at <i>each photograph</i> before making any decision regarding identification.• Regardless of whether the victims or witnesses select the right or wrong photograph, do not discuss their choice with them. Document their choice verbatim.• The victim or witness should initial the back of the selected photograph or copy of the selected photograph.
Follow-up	<ul style="list-style-type: none">• Place all photographs in an evidence envelope, seal, initial, date, and place the evidence in storage.• A copy of the photographic spread should be attached to the report.• All electronic recordings made of the identification procedure should be booked into evidence. If no video recording is available, the investigating officer must document why no video exists.

NOTE: All procedures are subject to agency regulations and guidelines.

CUSTODIAL LINEUPS

Introduction

A **custodial lineup** (also known as a physical lineup) is an identification procedure in which the victim or witness to a crime is asked to look at a number of individuals within a custodial environment in an attempt to identify the suspect.

Timing

A custodial lineup may take place any time after a crime has been committed.

Location

A custodial lineup takes place within a controlled environment of a law enforcement facility.

Legal Representation

If the custodial lineup takes place after criminal judicial proceedings have commenced against the suspect (indictment or first court appearance), the suspect has the right to the presence of an attorney at the lineup per the Sixth Amendment.

However, the attorney is present only as a silent observer and is not allowed to ask questions or make objections.

NOTE: For lineups which occur *before* judicial proceedings have commenced, some departments routinely notify the defense attorney and the DA's office.

Recommended Identification Procedures

The following table identifies recommended procedures to aid in the identification of a suspect by using a custodial lineup.

	Recommended Procedures
Preparation	<ul style="list-style-type: none">• Include at least six participants in the lineup, if possible• Blind or blinded administration of the custodial line up should be done, if possible• Choose participants of the same race, sex, and with similar characteristics• If the suspect wore any distinctive clothing, have all participants in the lineup wear similar clothing• If, prior to the lineup, the witness or victim describes the suspect as having a particular or distinguishing characteristic (e.g., facial hair, hair color, tattoos, scars, etc.), make sure that the others in the lineup also have this characteristic, if at all possible• Nothing shall be said to the victim or witness to influence their decision• Alert the victim or witness beforehand that the defense attorney may be present and noting all comments, intended or offhand, they may make during the identification process• If a defense attorney is present, request that a prosecutor be present also
Administration	<ul style="list-style-type: none">• If suspects refuse to fully participate or cooperate in a lineup, inform them that their resistance may be commented upon in a court as an admission of guilt• If voice identification is necessary, have all participants say the same words• Regardless of whether the victims or witnesses select the right or wrong person from the lineup, do not discuss their choice with them. Document their choice verbatim• Audio and video recordings shall be made and booked into evidence.

Recommended Identification Procedures (Continued)

	Recommended Procedures
Follow-up	<ul style="list-style-type: none">• Document the names of all participants in the lineup and all other individuals present• Take individual photographs of each participant in the lineup and preserve the photos for trial

NOTE: All procedures are subject to agency regulations and guidelines.

Learning Need

Peace officers must be aware of the due process rights that protect against impermissible suggestiveness when conducting any procedure involving a subject's identification.

Neutral Role of Peace Officer [16.06.1]

Officers should not do anything that suggests or could be interpreted as suggesting which suspect to select during any type of identification procedure.

Field Show-Up [16.06.2]

Display the detainee outside the law enforcement vehicle without handcuffs or other forms of restraint, if it is safe to do so.

Photographic Spread [16.06.3]

Use photographs that are all the same approximate overall size and depict the same approximate shots of the person (e.g., all close-ups). Use photographs of persons of the same sex, race, and similar facial characteristics.

Custodial Lineup [16.06.4]

Choose participants of the same race, sex, and with similar characteristics, including distinctive clothing or particular characteristics.

Introduction

Activity Questions

1. Compile a list of actions suitable for a display poster that would help an officer avoid biasing victims or witnesses during a field show-up. Include at least four items.
2. Why, if possible, should all photos in a photographic spread be either black and white, or color, but not a mixture of both?

3. During a custodial lineup, a victim was presented with six potential male suspects, including two Caucasian males, two Asian males, and two African American males. Is this a suggestive lineup? Explain.

Glossary

Introduction

The key vocabulary terms for Learning Domain 16: Search and Seizure are listed below with the definitions as they apply to this workbook.

Case Law

Court opinions that are issued over time through the power of judicial review

Circumstantial Evidence

Evidence that does not prove a fact directly, but rather is personal knowledge or observations from which deductions are drawn

Consent Search

Search conducted with consent that is voluntary and obtained from a person with the authority to give that consent

Contemporaneous

Search conducted at or near the time of arrest, although either can precede the other, at or near the place of the arrest, and while the arrestee is still on the scene

Curtilage

Relatively small and usually well-defined area immediately around a residence to which the private activities of the home extend, and in which the owner has an expectation of privacy

Custodial Arrest

Arrest in which the suspect will be transported to a station, jail, detox center, juvenile hall, or school

Custodial Lineup

Identification procedure in which the victim or witness to a crime is asked to look at a number of individuals within a custodial environment in an attempt to identify the suspect (also known as a physical lineup)

Direct Evidence

Evidence that proves a fact directly, without an inference or presumption (e.g., the sale of a controlled substance to an undercover officer)

Evanescent Evidence

Evidence that *will change* or be lost over time

Exigent Circumstances

An emergency situation requiring swift action to prevent imminent danger to life, serious danger to property, imminent escape of a suspect, or the destruction of evidence

Field Show-Up

Viewing of a suspect by the victim or witness that commonly occurs in the field shortly after a crime has been committed

Implied Consent

By obtaining a driver's license in California a person has agreed to chemical testing without a warrant (i.e., blood, breath, urine)

Knock and Notice

Before entering a dwelling to serve a search warrant, officers must give notice to persons inside through certain actions

Motor Vehicle

Self-propelled vehicle (e.g., automobiles, airplanes, buses, recreational vehicles, carts, etc.)

Nexus

A reasonable connection or link between two or more items

Objective Reasonableness

Whether society is prepared to recognize an individual's expectation of privacy as reasonable

Open Fields

Outdoor real property, outside the curtilage of the residence

Overflight

Flight of a plane or helicopter over a given area

Parole

Extension of an offender's sentence, that is, an additional specific period of time (usually three years) which a person must serve on the "outside" after having completed the actual prison sentence

Passenger Compartment

Passenger Compartment can be considered to include all areas accessible to occupants within the vehicle

Photographic Spread

Identification procedure in which the victim or witness to a crime is asked to look at a number of photographs in an attempt to identify the suspect (also known as a photographic lineup)

Plain View

Objects in the line of sight of an officer who has the right to be in that position are subject to seizure without a warrant if the officer has lawful access to the object(s)

Probable Cause Exception

Warrantless vehicle search based on probable cause that the vehicle contains contraband or evidence of a crime. Also referred to as the “automobile exception,” or the “vehicle exception”

Probable Cause Plus

Additional show of need, beyond the usual probable cause, required for bodily intrusion warrants

Probable Cause to Search

Enough credible information to provide a *fair probability* that the object the peace officers seek will be found at the place they want to search

Probation

Sentencing alternative for a person convicted of a criminal offense granted at a judge’s discretion

Protective Search of A Vehicle

Limited warrantless search of the passenger compartment of a vehicle for weapons

Protective Sweep

Brief search of a house or building to look for individuals only

Public Access Area

Any area that the general public or some members of the public have been given either express or implied permission to be in

Reasonable Expectation of Privacy

When individuals have indicated that they personally (subjectively) expect privacy in the object or area, and their expectation is one which society is prepared to recognize as legitimate

Reasonable Inference

Act of drawing a conclusion from a fact; it is similar to making a presumption (e.g., seeing smoke and inferring there is a fire)

Search

Governmental infringement or intrusion upon an expectation of privacy that society is prepared to consider reasonable

Search Warrant

Written order, in the name of the people, signed by a magistrate, directed to a peace officer, commanding the officer to search for a person or persons, a thing or things, or personal property, and, in the case of a thing or things or personal property, to bring the same before the magistrate (*Penal Code Section 1523*)

Seizure of a Person

Peace officer's physical application of force, or a person's voluntary submission to a peace officer's authority

Seizure of Property

Meaningful interference with an individual's possessory interest in that property by the government

Stable Evidence

Evidence that will *not change* over time

Standing

When a person has a legitimate possessory interest or relationship over an object or area

Subjective Expectation of Privacy

A person's state of mind demonstrated by affirmative action designed to protect their privacy

Valid Consent

A person can give permission for search of areas/items within their control

Vehicle Inventory

Procedure peace officers use to account for personal property in a vehicle that is about to be impounded or stored

Voluntary Consent

An act of free will and not the result of duress or coercion