CALIFORNIA COMMISSION ON PEACE OFFICER STANDARDS AND TRAINING

Basic Course Workbook Series

Student Materials

PC 832 Student Workbook
Volume Two: Law

Version 3.4

Basic Course Workbook Series
Student Materials
PC 832 Student Workbook
Volume Two: Law and Evidence
Version 3.4

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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

PC 832 Student Workbook Volume Two: Law and Evidence

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How to Use the Student 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 prior to classroom attendance, for test preparation, and for remedial training.

Workbook format

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

Step	Action
1	Read the first two sections: How to Use the Workbook and Preface which provide an overview of how the workbook fits into the POST Instructional System and how it should be used.
2	Refer to the overview section at the start of each chapter to review the learning objectives.
3	Read the text.
4	Refer to the Chapter Synopsis section at the end of each chapter to review the key points that support the chapter objectives.
5	Complete the Workbook Learning Activities at the end of each section. These activities reinforce the material taught in the section.
6	Refer to the Glossary section for a definition of important terms. The terms appear throughout the text and are bolded and underlined the first time they appear (e.g., **term**).

Preface

Introduction

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
- a glossary of terms used in this workbook.

Chapter 1

Introduction to Criminal Law
Learning Domain 5

Overview

Origins of the Law

Learning need

Peace officers must know the origins of current law to know the role of law enforcement today.

Learning objectives

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

After completing study of this section, the student will be able to...	Objective ID
• identify the relationship among: - constitutional law - statutory law - case law	5.01.4

In this section

This section focuses on the origins of criminal law. Refer to the chart below for specific topics.

Topic	See Page
Current Law	1-2
Section Synopsis	1-29
Workbook Learning Activities	1-33

Current Law

Introduction

The three origins of law found in today's legal system are:

- constitutional law
- statutory law
- case law

Constitutional law and the Bill of Rights

The rules and provisions found in the federal and state constitutions form the basis of modern **constitutional law**.

The federal courts, as well as all local and state courts, are bound by the U.S. Constitution, which is the supreme law of the land. States may add to, but not take away, any of the civil liberties guaranteed by the U.S. Constitution.

Law enforcement officers are also impacted and bound by the decisions of these courts.

Many of the rules governing criminal procedure, such as due process, search and seizure, self-incrimination, and equal protection, are set forth in the first 10 amendments to the U.S. Constitution, known as the Bill of Rights.

Statutory law

Statutory law consists of the written laws enacted by a legislative body.

All crimes are statutory in California. To be enforceable, a law must be written, a concept based on the legal principle that "there is no crime if there is no statute," and a punishment must be provided.

Continued on next page

Statutory law (continued)

Punishments for a crime are usually noted in the same statute that describes the criminal act itself, or in an adjoining statute. *Penal Code Sections 18* and *19* also provide for punishments for those offenses without a specific punishment.

Both the U.S. and the California State Constitutions prohibit **ex post facto laws**, laws written after the fact to punish an action that has already taken place and was not illegal at the time of commission. In other words, the law must have been enacted before the alleged criminal act took place.

Codes

Statutory law is recorded in the various state, county, or municipal **codes**. State codes include all current statutes enacted by the state legislature. County and municipal codes include all current **ordinances** (statutes) enacted by a county or city. Statutes are arranged systematically in the codes for easy reference.

The California codes most likely to be encountered by law enforcement officers are:

- Penal Code
- Vehicle Code
- Welfare and Institutions Code
- Health and Safety Code
- Evidence Code
- Business and Professions Code
- Education Code
- Government Code
- Fish and Game Code
- California Code of Regulations

Continued on next page

Case law

Case law is based upon previous appellate court decisions that are binding on lower court decisions. This principle is known as **precedent**.

The primary purposes of case law are to:

- interpret the Constitution
- clarify statutes

California trial courts must follow both state and federal appellate court decisions.

Judicial review

Both the state and federal legislative branches can declare certain behavior to be criminal and punishable by law. However, this power is limited.

Civil and individual rights, particularly those found in the Bill of Rights, limit legislative authority. The judicial branch, through the power of **judicial review**, protects the rights of the individual from unconstitutional legislation.

Distinctions in the Law

Overview

Learning need

Peace officers must know the nuances of the written law to correctly interpret the law.

Learning objectives

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

After completing study of this section, the student will be able to...	Objective ID
• differentiate between the letter of the law and the spirit of the law	5.02.1
• differentiate between criminal and civil law	5.02.3

In this section

This section focuses on the important distinctions in the law. Refer to the chart below for specific topics.

Topic	See Page
Letter of the law vs. spirit of the law	1-6
Criminal and civil law	1-8

Letter of the Law vs. Spirit of the Law

Introduction

California's legal system is based partly on English common law. One critical distinction is that common law was bound to the *letter of the law*. The California legal system requires consideration of the *spirit of the law* and the intent of the legislature.

Letter of the law

Letter of the law means the law is strictly applied in accordance with the literal meaning of the statute, leaving no room for interpretation.

Spirit of the law

Spirit of the law means the law is applied in accordance with the intent of the legislature, the promotion of fairness and justice, and not solely in literal compliance with the words of the statute.

Interpretation of the law

Although California criminal law is required to be statutory, each code provision must be interpreted with regard to:

- its relationship to other statutes
- the intent of the legislative body
- the meaning of the words
- the scope of its effect

Statutes must be interpreted by the courts and peace officers according to the spirit, rather than, the letter of the law. "All statutes must be construed according to the fair import of their terms, with a view to effect its objects to promote justice." *(Penal Code Section 4)*

Continued on next page

Policing in our communities

A review of the world's criminal law systems reveals a common understanding of what constitutes serious crime. These crimes include murder, manslaughter, assault, rape, burglary, theft, perjury, and threats to the government such as treason. These crimes and the fear carried by these crimes have a substantial impact on communities, and law enforcement plays a major role in reducing them. Minor crimes such as graffiti, littering, and public disorder also have a negative impact on communities and need to be addressed. Criminal law can be used by peace officers to help reduce crime and the fear of crime, and to increase the quality of life for all citizens.

Example

The following is an example of interpreting the spirit of the law.

Penal Code Section 647(f) was enacted to protect society and the inebriate from harm and inconvenience. If the statute is interpreted according to the strict letter of the law, every person who is publicly drunk and unable to care for themselves is subject to arrest and prosecution. However, there are circumstances when society and the inebriate are better served by applying the spirit of the law, making release to a friend or family member or provision of an escort home a better choice than arrest.

Criminal and Civil Law

Introduction

Laws are classified as either criminal or civil and share the common purpose of controlling wrongful behavior. Frequently, an act will be committed that harms both the community and an individual, resulting in both civil action and criminal prosecution.

Criminal law

Criminal law deals with violations of the criminal statutes. Such violations are called **crimes** and are considered public wrongs against all the people of the State of California.

The consequence for violating criminal law is prosecution. The state prosecutes a criminal when a crime has been committed.

One aim of criminal law is punishment, which may include death, incarceration, fines payable to the city, county, state, or nation, and removal from office or disqualification from holding office. The purposes of punishment is to deter criminal behavior and to rehabilitate criminals.

Civil law

Civil law, on the other hand, deals with noncriminal violations of the law or private wrongs committed by one person against another. A civil wrong is called a **tort**, or in the case of failure to comply with the terms of a contract, a **breach of contract**.

The purpose of civil law is **redress**, or in other words, to right a wrong.

Under civil law, the injured party may file a lawsuit for monetary compensation or other relief, not including incarceration. In this case, the plaintiff is the injured party, and any compensation is paid to him or her.

Continued on next page

Civil law (continued)

Law enforcement officers have a duty to investigate any potential criminal violations, even in civil matters.

If the matter is only civil, peace officers lack the authority to force a resolution to the dispute. Their duty is to stand by, preserve the peace and maintain order.

Example: An officer could not force a tenant to pay back rent because the payment of the rent is a civil issue. However, if the landlord were to lock the tenant out of his apartment (without the proper court order) that would be a criminal law violation which the officer could enforce.

Tort by omission

Omission of an act or negligence may also be a tort if it violates a legal duty owed to another person.

Example: A store owner failed to alert customers to a hazardous situation, such as a wet floor, resulting in an injured customer. The store owner's failure to act could lead to a civil action.

Civil actions by crime victims

A person who has been injured as a result of a crime may also file a civil action even though the state files criminal charges. Even when based upon the same occurrence, however, the criminal and civil law suits will proceed independently of each other. There are legal processes that may hold individuals responsible several times for the same act.

Criminal Law

Overview

Learning need

To enforce the law, peace officers must know what constitutes a crime and the information required to identify that a crime has occurred.

Learning objectives

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

After completing study of this section, the student will be able to...	Objective ID
• recall the statutory definition of a crime	5.03.1
• identify the basic elements common to all crimes	5.03.5
• identify the basic elements required of an attempt to commit a crime	5.03.6
• discuss general, specific, and transferred intent crimes	5.03.8
• differentiate between criminal intent and criminal negligence	5.03.9

In this section

This section focuses on criminal law. Refer to the chart below for specific topics.

Topic	See Page
Crime and Punishment	1-12
Elements of a Crime	1-13
Attempt to commit a Crime	1-17

Crime and Punishment

Introduction

Crimes are considered a collective wrong against the people of the State of California. Any person accused of committing a crime may be prosecuted and, if convicted, punished as prescribed by law. Enforcing the law on behalf of the state is the responsibility of law enforcement.

Definition of a crime

A crime is a violation of a criminal statute. *Penal Code Section 15* defines a crime or public offense as "an act committed or omitted in violation of a law forbidding or commanding it," and to which is annexed, upon conviction, a penalty that provides the following punishments for the crime:

- death
- imprisonment
- fine, removal from office
- disqualification to hold and enjoy any office of honor, trust, or profit in the State of California

Persons liable for punishment

Persons liable for punishment under the laws of California *(Penal Code Section 27)* include:

- all persons who commit, in whole or in part, any crime within California
- all persons who commit any offense outside California which, if committed inside California, would be larceny, carjacking, robbery, or embezzlement and bring or are found with any portion of the stolen or embezzled property in California
- all persons outside California who cause, aid, advise, or encourage another person to commit a crime within California, and who are afterwards found in California
- all persons who commit perjury outside the state to the extent identified in *Penal Code Section 118*

Elements of a Crime

Introduction

To arrest a person for committing a crime, the elements of that crime must be substantiated.

Elements of the crime

Elements of the crime are the basic facts that must be proven by the prosecution to sustain a conviction. If any element is missing, that particular crime is not complete.

Penal Code Section 20 states that "in every crime or public offense, there must exist a union, or joint operation of act and intent, or criminal negligence."

The following table identifies the elements that are basic to every crime:

Element	Further Explanation
Commission of a prohibited act, or an omission of a required act	There must have been an illegal human act or omission, not an act resulting from natural phenomena (lightning, earthquake, flood).
Presence of a designated state of mind (intent)	**Criminal intent** must exist to distinguish the crime from an accident or mistake of fact.

Intent

All crimes require criminal intent which means a mental state or frame of mind that the person knowingly did the particular criminal act (break the law). It may be general, specific or transferred.

The intent or intention is manifested by the totality of the circumstances connected with the offense (facts of the case). *(Penal Code Section 21(a))*

Continued on next page

Intent (continued)

In some crimes intent is presumed and does not have to be proven. These are called **general intent crimes**, i.e. battery, arson, transportation of drugs or ex-felon in possession of a firearm. In general, the person intentionally did that which the law declared to be a crime.

It does not matter that the person does not know that the particular conduct was against the law. General intent presumes that the person was aware of his (or her) actions or was aware of his (or her) conduct. Ignorance of the law is no excuse.

In other crimes intent is an element of the offense that must be proven. These are called **specific intent crimes**, i.e. burglary, or kidnapping for ransom.

Specific intent crimes are recognized by the language of the statutes, such as: with intent to, or, for the purpose of. When the definition of a crime refers to a person's intent to do some further act or achieve some additional consequence, the crime is one of specific intent. Unless this specific intent exists, the crime has not been committed.

Examples:

General intent	Specific intent
Possession of less than an ounce of marijuana, it is not necessary to prove intent, only that the marijuana was possessed.	Possession of marijuana with intent to sell; possession must be proven as well as intent to sell.

Continued on next page

Transferred intent

Transferred intent. When an *unlawful act* affects a person other than, or in addition to, the person it was intended to affect, the intent becomes transferred intent. Criminal intent in these instances is transferred from the intended victim to the actual victim.

Intent may be transferred only if the act involved does not require a different state of mind or criminal intent.

If an action is lawful there is no crime and transferred intent does not apply.

Examples

The defendant shot at an intended victim with intent to kill him, but instead hit and killed a bystander. The defendant is guilty of murder even though he did not have the specific intent to kill the bystander. The intent transfers from the intended victim to the bystander.

During a dispute between motorists on the freeway, Smith rammed his car into Jones' car in an attempt to run Jones off the road. As a result, Jones' car struck Johnson's car, causing Johnson to lose control and hit a utility pole. Subsequently, Johnson died. Smith was charged with murder.

Criminal negligence

In certain crimes, **criminal negligence** meets the requirement of criminal intent. Negligence is the failure to exercise ordinary care. Criminal negligence is a negligent act that is aggravated or reckless and constitutes indifference to the consequences.

Continued on next page

Example

A father left his sleeping 18-month-old daughter strapped in her car child seat inside the closed car even though he knew the temperature that afternoon was expected to exceed 90 degrees. He left the child unattended for a number of hours. The daughter died from the excessive heat buildup inside the vehicle. Although the father had no intent of injuring his daughter, he is still criminally negligent.

Specific crime elements

Each crime has its own set of specific elements that must be proven to establish that a crime has been committed.

For example, *Penal Code Section 459* identifies the crime of burglary. It also states that the crime of burglary is complete when:

- any person
- enters
- a building or specified structure
- with intent to commit grand or petty theft or any felony.

NOTE: At a felony preliminary hearing, the district attorney, representing the state, must establish that all the essential elements of the crime are present, otherwise the defendant will not be bound over for trial.

To be a crime there must be criminal intent or criminal negligence. Whether it is a general intent or specific intent crime is really a matter for the prosecutor.

Attempt to Commit a Crime

Introduction

Any attempt to commit a crime is a crime.

Attempt to commit a crime

An attempt to commit a crime consists of:

- intent to commit that crime
- a direct, but ineffectual, act done toward its commission

Merely *thinking* about committing a crime is not sufficient to constitute an attempt. A crime is committed only when substantial effort has been exerted to carry out the criminal objective.

A crime of attempt is possible whenever the circumstances make accomplishment of the objective apparently possible, even though in fact, it was not accomplished.

Examples

A woman told a drug dealer that she wanted to purchase heroin from him. Although she did not realize it, the dealer sold the woman talcum powder. The woman has attempted to possess a controlled substance.

A man enters a bank and gives the teller a demand note. The teller pretends to faint and the man runs from the bank. The man has attempted to commit robbery. The crime is not complete because he did not get the money.

Continued on next page

Attempt crimes defined in the penal code

The Penal Code addresses some attempted crimes individually. Attempt crimes having their own penal code section are charged and punished under that section.

For example, if a person attempts to set fire to his former girlfriend's house, he is charged under *Penal Code Section 455*, attempt arson. The crime is punishable by imprisonment in the state prison.

The attempt to commit certain sex crimes is charged under *Penal Code Section 220*.

NOTE: Additional information regarding *Penal Code Section 220* is located in LD 10: *Sex Crime*

Attempt crimes not defined in the penal code

Attempt crimes not defined individually in the Penal Code are charged under the general provisions of *Penal Code Section 664* (attempts; punishment) and the penal code section for the crime attempted. For example, *Penal Code Sections 664 and 459* are charged for an attempt burglary.

Chapter Synopsis

Learning need	To enforce the law, peace officers must know what constitutes a crime and the information required to identify that a crime has occurred.
Crime and punishment [5.03.1]	*Penal Code Section 15* defines a crime as a violation of a criminal statute and provides the punishments for a crime.
Elements of a crime [5.03.5]	The elements of the crime are the basic facts that must be proved by the prosecution to sustain a conviction. If any of the elements is missing, the crime is incomplete.
An attempt to commit a crime [5.03.6]	An attempt to commit a crime consists of two elements: • an intent to commit that crime • a direct, but ineffectual, act done toward its commission
General, specific and intent crimes [5.03.8]	All crimes require criminal intent which means a state of mind that the person knowingly did the particular criminal act (break the law). It may be general, specific, transferred.
Differences between criminal intent and criminal negligence [5.03.9]	Criminal intent must exist to distinguish the crime from an accident or mistake of fact. Criminal negligence meets the requirement of criminal intent. Negligence is the failure to exercise ordinary care.

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. What is criminal negligence? How does it relate to the concept of intent?

2. Define criminal intent. Explain the concept using the example of a suspect charged with vehicular manslaughter after hitting and killing a child playing in her front yard. Evidence shows that the suspect had been driving at least 40 mph on a winding residential street with a speed limit of 25 mph when he lost control of his car and swerved into the yard.

Continued on next page

Activity questions (continued)

3. List and explain in your own words the elements that are essential to every crime.

4. Three 18-year-old female gang members are angry with another female, Cheri, who has left the gang. Together the three work out a plan to surprise Cheri, confront her, and beat her with a baseball bat (assault with a deadly weapon). Because Cheri leaves town abruptly, no further action on the plan is ever taken. Is the crime of assault with a deadly weapon complete? Explain why or why not.

Continued on next page

Activity questions

5. Write a short example illustrating the concept of transferred intent.

Overview

Learning need

To arrest a subject, peace officers must determine what type of crime has been committed, who was involved in the commission of the crime, and who cannot be criminally liable.

Learning objectives

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

After completing study of this section, the student will be able to...	**Objective ID**
• identify three classes of crimes: - felony - misdemeanor - infraction	 5.04.1 5.04.2 5.04.3
• differentiate among the three parties to a crime: - principals - accessories - accomplices	5.04.4
• identify people legally incapable of committing a crime	5.04.7

Continued on next page

In this section

This section focuses on the prosecution of crimes. Refer to the chart below for specific topics.

Topic	See Page
Classification of Crimes	1-25
Principals, Accessories, and Accomplices	1-27
People Legally Incapable of Committing a Crime	1-30
Chapter Synopsis	1-35
Learning Activities	1-39

Classification of Crimes

Introduction

Crimes are classified by severity of punishment into three categories.

- Felonies
- Misdemeanors
- Infractions

Felony

A **felony** is a crime, punishable by a fine and/or imprisonment in state prison, death, or removal from office. *(Penal Code Section 17)*

Misdemeanor

A **misdemeanor** is a crime of lesser gravity than a felony. Misdemeanors are punishable by a fine and/or imprisonment in a county jail. *(Penal Code Section 19)*

"Wobbler"

A crime that can be either a felony or a misdemeanor is commonly referred to as a **wobbler**, an alternative felony/misdemeanor. These crimes are punishable by imprisonment in either the state prison or the county jail and/or a fine.

Crimes that are considered to be wobblers are treated as felonies by law enforcement officers.

Example: Burglary in the second degree is a wobbler, because it allows sentencing to a county jail or state prison.

Continued on next page

Infraction

A public offense punishable by a fine only is an **infraction**. Normally, the offender is issued a citation in place of arrest.

A person charged with an infraction is not entitled to a jury trial or to representation by a public defender, except in cases involving arrest. A public defender may be appointed later if the person was refused bail or not released under his or her own recognizance.

However, except as otherwise provided by law, all provisions of law relating to misdemeanors (such as powers of peace officers, periods for commencing action, and burden of proof) apply to infractions. *(Penal Code Section 19.7)*

Principals, Accessories, and Accomplices

Introduction

All individuals who commit crimes in California (and, in certain instances, outside California) are subject to prosecution and punishment by the state. They are parties to crime as either:

- principals
- accessories
- accomplices

Principals

Per *Penal Code Section 31*, **principals** include all persons involved in the commission of a felony or misdemeanor. All principals to a crime can be arrested and prosecuted.

Persons are principal parties to a crime only if there is proof that they had the required criminal intent.

Descriptions of principals

A principal to a crime is anyone who:

- directly committed the offense
- aided and abetted in the commission of the offense
- advised and encouraged the commission of the offense
- counseled, advised, or encouraged children under the age of 14 years, lunatics, or idiots, to commit the offense
- by fraud, contrivance, or force, occasioned the drunkenness of another for the purpose of causing that person to commit the offense
- by threats, menaces, command, or coercion compelled another to commit the offense

NOTE: A principal need not be present during the actual commission of the crime.

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Aiding and abetting

A person **aids and abets** in the commission of a crime if he or she actively assists, supports, promotes, encourages, strengthens, or instigates by act or advice, the commission of the offense. The person who aids and abets, must have *knowledge of the unlawful purpose* (intent) of the actual perpetrator of the crime. **Abet** implies having a guilty knowledge and felonious intent. **Aid** is actively assisting or supporting without knowledge of guilt.

Examples

The following are examples of principals to a crime.

At Brian's request, Julia obtained a motel room for use by Brian and an underage girl, knowing that Brian planned to have sexual intercourse with the girl. Julia took Brian and the girl to the room and returned to awaken them at a prearranged time. Both Brian and Julia have committed unlawful sexual intercourse. Even though Julia did not commit the offense herself, she aided and abetted Brian in the commission of an illegal act.

Brian and Ken planned to rob a bank. They decided that Brian would drive the getaway car, and Ken would run into the bank and steal the money. They successfully robbed the bank and drove off with the stolen money. Both Brian and Ken are principals to the robbery, and they are equally culpable for the charge of robbery.

A crowd of gang members attacked a member of a rival gang. The victim was knocked to the ground and kicked repeatedly in the head with heavy boots. The victim died from severe head trauma. Each of the participants in the assault is a principal to murder. It makes no difference which gang member struck the killing blow since each of them is liable for the natural and foreseeable consequences of the brutal attack.

Continued on next page

Accessories

An **accessory** is anyone who, after a felony has been committed, meets all the following requirements. *(Penal Code Section 32)*

- Has knowledge that the principal has committed, has been charged with, or has been convicted of committing a felony.
- Harbors, conceals, or aids a principal in the felony.
- Has the intention of assisting the principal to avoid or escape arrest, trial, conviction, or punishment.

The crime of accessory is punishable by imprisonment in the state prison or in a county jail and/or fine. *(Penal Code Section 33)*

NOTE: There are no accessories to misdemeanor crimes.

Accomplices

A principal to a crime becomes an **accomplice** when he or she testifies for the prosecution against another principal.

Accomplice testimony must be "corroborated by such other evidence as shall tend to connect the defendant with the commission of the offense; and the corroboration is not sufficient if it merely shows the commission of the offense or the circumstances thereof." *(Penal Code Section 1111)*

Example: Two men were arrested for a drive-by shooting. One volunteers to provide testimony against the shooter. His testimony was corroborated by the shooter's fingerprints found on the gun. His corroborated testimony against the shooter makes him an accomplice to the crime.

People Legally Incapable of Committing a Crime

Introduction

Certain people are presumed by the law to be legally incapable of forming the necessary intent and therefore are incapable of committing crimes.

Incapable persons

Penal Code Section 26 identifies those individuals who are presumed not capable of forming the designated state of mind and committing a crime. They include:

- children under 14
- persons who are mentally in capacitated
- persons who committed the act or omission
  - under ignorance or mistake of fact
  - without being conscious of the act
  - through misfortune or accident
  - under threat or menace

Children

Children under the age of 14 are considered too young to form the necessary intent to commit a crime.

An exception occurs if it can be shown that at the time of the crime, the child knew the wrongfulness of the act. Such a finding is a legal question determined by the court, not by individual officers. Officers should record any evidence that could have a bearing on this factor.

NOTE: In California, all children under the age of 18 are subject to the provisions of the juvenile justice system. (See LD 11: *Juvenile Law and Procedure*)

Continued on next page

People Legally Incapable of Committing a Crime, Continued

Lack of mental capacity

Mentally incapacitated, people with very low mentality (which may include mental retardation), are presumed to lack the ability to form intent, and are therefore unable to commit a crime *(Penal Code Section 26)*.

Mental incapacitation is a condition that exists from birth. A mentally incapacitated person has an IQ between 0 and 24 on the Binet intelligence scale, in contrast to the average IQ between 90 and 100. Case law states that mental retardation is a defense if the defendant lacked substantial capacity to appreciate the criminality of his or her conduct or to conform his or her conduct to the requirements of law.

Ignorance or mistake

Individuals who unlawfully act or fail to act because of ignorance or mistake are considered incapable of committing a crime.

It must be determined by the jury that such individuals made an honest and reasonable mistake without any criminal intent or negligence.

Examples

Julia accidentally picked up someone else's coat when she quickly left a meeting. Julia is able to show that she intended to leave with her own very similar coat. Julia returned the coat. Julia has not committed a crime; she has made a mistake.

An adult male held to answer for unlawful sexual intercourse with a minor female presented evidence that he had a good faith, reasonable belief based on the girl's appearance, actions, and representations that she was 18 years old and a voluntary participant in the act. There is no criminal intent because the defendant reasonably believed that the female had reached the age of consent.

Continued on next page

People Legally Incapable of Committing a Crime, Continued

Unconscious act

Individuals who unconsciously commit an unlawful act or omission are deemed to lack the intent necessary for the act to be considered a crime.

To invoke this defense, the person must demonstrate that the act was involuntary and was caused by an irrational, unconscious response. For instance, the act may have been committed while that person was asleep, delirious with a high fever, suffering from medical seizure or diabetic complications, or involuntarily under the influence of alcohol or drugs.

It is not necessary that the person be incapable of movement. This defense is different from that of insanity or mental disease. The person's actions were controlled by the subconscious rather than the conscious mind.

Misfortune or accident

Individuals who commit an unlawful act or omit an act through misfortune or by accident, with no apparent evil design, intention, or culpable negligence, are not considered responsible for committing a crime.

This defense is most often used in cases of bodily injury or homicide, either excusable or justifiable.

Continued on next page

People Legally Incapable of Committing a Crime, Continued

Examples

A sober person driving a vehicle in good mechanical condition was traveling within the posted speed limit on a dry, clear day. Without warning, a pedestrian darted out from behind a parked car in the middle of the block and into the path of the vehicle. The car struck and injured the pedestrian. The injury was unintentional with no evil design (intent) on the part of the driver.

A woman, defending herself against an unprovoked attack, punched her assailant in the head. The blow caused the assailant to fall onto a sharp object, resulting in the assailant's death. The woman did not have criminal intent, therefore, did not commit a crime.

Threat or menace

Individuals are not held accountable for a crime if they commit the unlawful act or omission (other than a capital crime) under threat or menace that reasonably causes them to believe their life would be endangered if they refused. Individuals who plead threat or menace must have been involved in the situation through no fault of their own.

Continued on next page

People Legally Incapable of Committing a Crime, Continued

Defense of others

Threat or menace may be used as a defense only in cases of self-defense. Action taken in response to threats to others' lives, while not applicable here, may come under justifiable homicide *(Penal Code Section 197.2)*, statutes authorizing the defense of others *(Penal Code Section 692 et seq.)*, or the defense of "necessity."

Examples

Upon approaching a convenience store late at night, Frank was stopped in the parking lot by a man with a gun. The man gave Frank an unloaded pistol and ordered him to rob the convenience store. The man tells Frank that he would be watching him through the window and would "cap him" if he didn't rob the store. Frank robbed the store and gave the gunman the proceeds. Frank has acted under threat or menace and lacks the criminal intent necessary for him to be guilty of a crime.

Section 1 Synopsis

Learning need	Peace officers must know the origins of current law to know the role of law enforcement today.
Current law [5.01.4]	The three origins for current law are Constitutional Law, Statutory Law, and Case Law.

Continued on next page

Learning need

Peace officers must know the nuances of the written law to correctly interpret the law.

Letter of the law vs. spirit of the law [5.02.1]

Letter of the law means that the law is strictly applied in accordance with the *literal meaning* of the statute, leaving no room for interpretation.

Spirit of the law means that the law is applied in accordance with the *intent of the legislature* and not in literal compliance with the words of the statute.

The California Penal Code requires that laws are to be applied according to the spirit of the law, in accordance with the intent of the legislative body rather than the literal meaning of the words of the statute.

Criminal and civil law [5.02.3]

	Criminal Law	**Civil Law**
Definition	Violations of a criminal statute	Noncriminal violations of the law
Violation terminology	Crime	Tort; Breach of Contract
Prosecutor	The state	The plaintiff
Purpose	Punishment	Redress

Continued on next page

Learning need	To enforce the law, peace officers must know what constitutes a crime and the information required to identify that a crime has occurred.
Crime and punishment [5.03.1]	*Penal Code Section 15* defines a crime as a violation of a criminal statute and provides the punishments for a crime.
Elements of a crime [5.03.5]	The elements of the crime are the basic facts that must be proved by the prosecution to sustain a conviction. If any of the elements is missing, the crime is incomplete.
Attempt to commit a crime [5.03.6]	An attempt to commit a crime consists of: intent to commit that crime, and a direct, but ineffectual, act done toward its commission.
General, specific and intent crimes [5.03.8]	All crimes require criminal intent which means a state of mind that the person knowingly did the particular criminal act (break the law). It may be general, specific, transferred.
Differences between criminal intent and criminal negligence [5.03.9]	Criminal intent must exist to distinguish the crime from an accident or mistake of fact. Criminal negligence meets the requirement of criminal intent. Negligence is the failure to exercise ordinary care.

Continued on next page

Learning need

To arrest a subject, peace officers must determine what type of crime has been committed, who was involved in the commission of the crime, and who cannot be criminally liable.

Crime classifications [5.04.1, 5.04.2, 5.04.3]

Crimes are classified by severity of punishment such as,

Felony:
- A fine, imprisonment in a state prison or death.

Misdemeanor:
- A fine, imprisonment in a county jail.

Infraction:
- A fine.

Parties to a crime [5.04.4]

Principal:
- directly commits a crime, or aids, abets, advises, or encourages another person in the commission of any crime.

Accessory:
- with knowledge that a felony was committed, harbors, aids, or conceals a principal, with the intent, or to avoid arrest or prosecution.

Accomplice:
- is a principal to the crime, and testifies for the prosecution.

People legally incapable of committing a crime [5.04.7]

All persons are presumed capable of forming the designated state of mind and of committing a crime except those identified in *Penal Code Section 26* as persons incapable of committing a crime.

Workbook Learning Activities

Introduction

To help you review and apply the material covered in this section, 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. How does case law differ from statutory law?

2. Discuss the process that an officer would use to locate the correct enforcement section in a California Code (Penal Code, Business & Professions Code, etc.)

Continued on next page

Activity questions

3. How do the aims of criminal law differ from those of civil law? Write an example for each type of violation showing the fulfillment of these aims.

4. A man grabbed a woman against her will, when she screamed, store security stopped and held the man. Peace officers were called at the woman's insistence. Do you think officers should treat this offense as a criminal and/or a civil matter? Explain your answer. Would this act be considered to be a public wrong or a private wrong?

Continued on next page

Activity questions (continued)

5. What is meant by the term "spirit of the law?" What is the position of the California Penal Code regarding interpreting statutes by the spirit or the letter of the law? How might this required interpretation benefit citizens?

6. An officer saw two young boys riding their bicycles without a helmet on a public street. If the officer takes the boys home to talk to the parents, rather than cite them, is the officer responding to the spirit or letter of the law? Explain.

Continued on next page

Activity questions

7. What is criminal negligence? How does it relate to the concept of intent?

8. Define criminal intent. Explain the concept using the example of a suspect charged with vehicular manslaughter after hitting and killing a child playing in her front yard. Evidence shows that the suspect had been driving at least 40 mph on a winding residential street with a speed limit of 25 mph when he lost control of his car and swerved into the yard.

Continued on next page

Activity questions (continued)

9. List and explain in your own words the elements that are essential to every crime.

10. Three 18-year-old female gang members are angry with another female, Cheri, who has left the gang. Together the three work out a plan to surprise Cheri, confront her, and beat her with a baseball bat (assault with a deadly weapon). Because Cheri leaves town abruptly, no further action on the plan is ever taken. Is the crime of assault with a deadly weapon complete? Explain why or why not.

Continued on next page

Activity questions

11. Write a short example illustrating the concept of transferred intent.

12. What are the three major classifications of crimes? Provide a brief definition of each, including the characteristics that distinguish each from the others. Finally, define a "wobbler" and explain how such crimes should be treated by peace officers.

Continued on next page

Activity questions

13. What is the difference between an accessory to a crime and an accomplice to a crime?

Continued on next page

Activity questions (continued)

14. What are the six categories of persons that *Penal Code Section 26* identifies as incapable of committing a crime? Why are all individuals in these categories considered incapable of this?

Student notes

Chapter 2

Laws of Arrest
Learning Domain 15

Overview

Constitutional Protections and the Role of a Peace Officer

Learning need

Peace officers must have an understanding of the amendments to the U.S. Constitution, and similar sections of the California Constitution that are related to the authority, liability, and responsibility they have in making arrests.

Learning objectives

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

After completing study of this section, the student will be able to...	Objective ID
• recognize a peace officer's responsibility in relation to the protections and rights included in the following amendments to the U.S. Constitution and related California Constitution sections: - Fourth Amendment - Fifth Amendment - Sixth Amendment - Fourteenth Amendment	 15.01.2 15.01.3 15.01.4 15.01.5
• recognize a peace officer's responsibility in relation to the protections included under federal civil rights statutes	15.01.6

Continued on next page

In this section

This section focuses on the U.S. and California constitutional provisions that directly impact peace officers. Refer to the chart below for a specific topic.

Topic	See Page
Overview of the U.S. and California Constitutions	2-3
Fourth Amendment	2-4
Fifth Amendment	2-6
Sixth Amendment	2-8
Fourteenth Amendment	2-10
Civil Rights Statutes	2-11

Overview of the U.S. and California Constitutions

Introduction	A Constitution is a written document which embodies the basic laws of a nation or state, defines the powers and duties of the government, and guarantees certain rights to the public.
Ethics	The authority to arrest and to deprive a person of freedom is one of the most serious and sensitive duties of a peace officer. Americans place high value on their personal freedom; they give the power of arrest to peace officers in full faith and consent with the understanding that it is to be used judiciously and under the strictest of limitations. The misuse of this authority undermines the relationship between peace officers and the community members they serve.
History of the Federal Constitution	The U.S. Constitution became effective in March 1789. The authors established this document to "form a more perfect Union, establish justice, insure domestic tranquility, provide for the common defense, promote the general welfare, and secure the blessings of liberty."
Amendments to the Constitution	The first session of Congress proposed 10 amendments to the Constitution. These amendments are called the "Bill of Rights." Since 1791, 17 additional amendments have been proposed by Congress and ratified by the voters.
California Constitution	In 1850, California became the 31st state to enter the Union, adopting its own Constitution in 1879. All the laws passed by the voters in the state must comply with the California Constitution, which is organized into articles that represent different subject matter areas.
Officer responsibility	During the performance of their duties peace officers have a legal, moral and ethical responsibility to protect all of the rights afforded to a citizen by the United States and California Constitutions.

Fourth Amendment

Text	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.
Guaranteed rights	The Fourth Amendment to the U.S. Constitution provides that people, houses, and effects (belongings) shall be secure from unreasonable searches and seizures, and requires probable cause for the issuance of warrants.
Meaning for peace officers	The first part of the Fourth Amendment deals with the right of people to be free from unreasonable searches and seizures. The second part defines procedures officers must follow when obtaining a warrant.
Related terms	**Reasonable suspicion** is the standard used to justify a detention. It exists when an officer has sufficient facts and information to make it reasonable to suspect that criminal activity may be occurring, and the person to be detained is connected to that activity. **Probable cause** to arrest exists when the totality of the circumstances or "total atmosphere" of the case would cause a person of ordinary care and prudence to entertain an honest and strong suspicion that the person to be arrested is guilty of a crime. A **search** occurs when an expectation of privacy that society is prepared to consider reasonable is infringed upon by the government. A **seizure of a person** occurs when a peace officer physically applies force to a person or when a person voluntarily submits to the officer's authority. A **seizure of property** occurs when there is some meaningful interference with an individual's possessory interest in that property by the government.

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Fourth Amendment, Continued

Officer responsibility	Peace officers have a responsibility to protect the Fourth Amendment rights of all citizens as it applies to unreasonable searchers and seizures.

Fifth Amendment

Text	No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.
Guaranteed rights	The Fifth Amendment of the U.S. Constitution provides that individuals cannot be compelled to be a witness against themselves in a criminal case, may not be tried for the same offense twice, or be deprived of life, liberty, or property without due process of law.
Meaning for peace officers	Peace officers need to understand the relationship between a person's right against self-incrimination and the Miranda decision. NOTE: The Miranda right to counsel was established by the United States Supreme Court in 1966 protecting a subject's Fifth Amendment right against self-incrimination.
Officer responsibility	Peace officers have a responsibility to protect the Fifth Amendment rights of citizens as they pertain to double jeopardy, being a witness against ones self, or depriving a person of life, liberty of property without due process.

Continued on next page

Fifth Amendment, Continued

Examples

An officer arrests a suspect for burglary. After the officer read the arrestee his Miranda rights, the arrestee waives his rights and agrees to answer questions. During questioning the arrestee confesses to the crime. If challenged in court the confession will not be suppressed because the officer obtained a knowing, voluntary waiver of the arrestee's 5th Amendment Right against self incrimination before obtaining the confession.

An officer arrests a subject for burglary. The officer reads the arrestee his Miranda Rights before questioning. After hearing his rights the arrestee invokes his 5th Amendment Right against self incrimination by stating that he wants his attorney present before answering any questions. The officer continues to question the arrestee and eventually obtains a confession. The confession will be suppressed in court as a violation of the arrestees 5th Amendment Rights.

An officer arrests a subject for burglary. Before reading the arrestee his Miranda Rights, the officer questions him about the crime and the arrestee confesses. The confession will be suppressed in court because the officer cannot show that the arrestee knowingly, voluntarily and intelligently waived his 5th Amendment Right against self incrimination.

Sixth Amendment

Text

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

Guaranteed rights

The Sixth Amendment to the U.S. Constitution guarantees people accused of a crime the right to:

- a speedy trial
- confront witnesses against them and obtain witnesses in their favor
- the assistance of counsel, during court proceedings

Meaning for peace officers

The Sixth Amendment entitles a person to counsel (i.e., an attorney) once adversary judicial proceedings have commenced. Adversary judicial proceedings are considered to have commenced when the person is either indicted by a grand jury, or makes his or her first court appearance. Once the Sixth Amendment right to counsel has attached and the person is represented by counsel, police are prohibited from initiating interrogation of the person about the charged crime, except in the presence of counsel.

NOTE: This Sixth Amendment right to counsel is constitutional and was designed to help formally charged defendants defend themselves in court.

Continued on next page

Sixth Amendment, Continued

Officer responsibility	Peace officers have a responsibility to protect the Sixth Amendment rights of people. The Sixth Amendment gives the right to a speedy trial, an opportunity to confront witnesses and the right to counsel during court proceedings.
Example	Following a grand jury indictment, officers went to Smith's house to serve an arrest warrant and "discuss his involvement in methamphetamine distribution." Smith made a series of incriminating statements before and after he was arrested. The officers violated Smith's 6th Amendment Rights by deliberately eliciting statements without the presence of Smith's attorney after Smith had been indicted.

Fourteenth Amendment

Text	All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.
Guaranteed rights	Through its "due process and equal protection" clauses, the Fourteenth Amendment to the U.S. Constitution applies portions of the Bill of Rights to all states.
Meaning to peace officers	The Fourteenth Amendment requires peace officers to apply the law equally to all people regardless of race, creed, nationality, religious preference, or national origin. NOTE: An undocumented person is entitled to equal protection under the 14th Amendment.
Officer responsibility	Peace officers have a responsibility to protect the Fourteenth Amendment rights of all people in the United States. The Fourteenth Amendment requires peace officers to apply the law equally to all people.

Civil Rights Statutes

Introduction

There are several Federal statutes protecting people's constitutional rights from conspiracies and from abuse by law enforcement. Violation of these statutes is a crime.

Text of *Section 1983*

U.S. Code, Title 42, Section 1983:

Civil action for deprivation of rights. Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

Summary of *Section 1983*

This statute permits a civil rights suit seeking monetary damages to be awarded to anyone who proves, in a court of law, that they were deprived of some legal right through governmental action, that is, by a person acting under color of law.

Under color of law means an action carried out as if under the authority of law, but is actually done in violation of the law (e.g., peace officers or magistrates using their positions to act in an unlawful manner).

NOTE: Peace Officers could suffer monetary sanctions.

Meaning for peace officers

Peace officers are subject to this statute and can be held *personally liable* if, while acting under the color of law, they deprive or deny someone a legal right to which the person was entitled.

Continued on next page

Text of *Section 241*

U.S. Code, Title 18, Section 241:

Conspiracy against rights of citizens. If two or more persons conspire to injure, oppress, threaten, or intimidate any person in any State, Territory, Commonwealth, Possession, or District in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States, or because of his having so exercised the same; ... They shall be fined under this title or imprisoned not more than ten years, or both;...

Summary of *Section 241*

This law makes it a federal crime, punishable by a fine or imprisonment up to 10 years, or both:

- if two or more persons
- conspire to injure, oppress, threaten, or intimidate any person
- for doing anything that the person had a legal right to be doing
- or because the person previously exercised any such legal right

NOTE: Conspiracy has different definitions under federal and state law.

Meaning for peace officers

Peace officers can be prosecuted *criminally* and be incarcerated if they conspire with other persons to deprive individuals of their legal rights.

Officer responsibility

Peace officers have a responsibility and legal obligation to protect the Civil Rights of all people as those rights pertain to the Federal Civil Rights Statutes.

Continued on next page

Text of *Section 242*

U.S. Code, Title 18, Section 242:

Deprivation of rights under color of law. Whoever, under color of any law, statute, ordinance, regulation, or custom, willfully subjects any inhabitant of any State, Territory, or District to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States, or to different punishments, pains, or penalties, on account of such inhabitant being an alien, or by reason of his color, or race, than are prescribed for the punishment of citizens, shall be fined under this title or imprisoned not more than one year, or both;...

Summary of *Section 242*

This law makes it a federal crime, punishable by a fine or imprisonment up to one year, or both:

- for any person, acting under color of any law
- to willfully deprive any person of any legal right
- or to subject any person to a different punishment or penalty
- based on that person's color, race, or citizenship status

Meaning to peace officers

Peace officers can be prosecuted *criminally* if they apply a law unevenly because of a person's color, race, or the fact that the person is an undocumented person.

Continued on next page

California equivalent

Penal Code Section 422.6(a) is broader than *U.S. Code, Title 18, Section 242.* It does not limit the governmental agent to acting only under "color of law." It includes additional categories of religion, ancestry, national origin, disability, gender, and sexual orientation that are protected from discrimination.

No person, whether or not acting under color of law, shall by force or threat of force, willfully injure, intimidate, interfere with, oppress, or threaten any other person in the free exercise or enjoyment of any right or privilege secured to him or her by the Constitution or laws of this state or by the Constitution or laws of the United States because of the other person's race, color, religion, ancestry, national origin, disability, gender, or sexual orientation, or because he or she perceives that the other person has one or more of those characteristics.

Consensual Encounters

Overview

Learning need

Peace officers must recognize that a consensual encounter is a face-to-face contact with a person under circumstances which would cause a reasonable person to believe they are free to leave or otherwise not cooperate.

Learning objectives

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

After completing study of this section, the student will be able to . . .	Objective ID
• recognize appropriate conduct during a consensual encounter	15.02.2
• recognize conduct that may elevate a consensual encounter	15.02.3
• recognize the consequences of elevating a consensual encounter	15.02.4

In this section

This section focuses on the characteristics of a consensual encounter.

Topic	See Page
Consensual Encounters	2-16
Elevating Consensual Encounters	2-18

Consensual Encounters

Introduction

Peace officers come into daily contact with individuals for a variety of reasons. The peace officer must be able to communicate with those individuals to aid and collect information without violating the Fourth Amendment.

Policing in our communities

With the advent of community policing, traditional measures of success such as the number of arrests are combined with new measures defined in terms of quality of life. These measures include reduction in alcohol-related traffic collisions, domestic abuse, homicide incidents, and drug-related recidivism. Arrests are not an end product in law enforcement work. They are useful tools in helping to achieve quality of life goals.

Definition

A **consensual encounter** is a face-to-face contact with a person under circumstances which would cause a reasonable person to believe they are free to leave or otherwise not cooperate.

No legal justification is needed as long as officers are in a place they have a right to be.

Appropriate applications

Peace officers must be vigilant when contacting the public to ensure their actions do not elevate a consensual encounter into a detention. Appropriate actions peace officers can take during a consensual encounter are:

- requesting information (including identification and personal information)
- interviewing witnesses at the scene of a crime or accident
- conversing casually
- disseminating information

Continued on next page

Consensual Encounters, Continued

Examples

A highway patrol officer arrived at the scene of an accident to assist another officer. The second officer interviewed the witnesses to the accident and took their statements.

Two peace officers were leaving a restaurant when an elderly couple approached them and asked for directions to the zoo. The officers gave them directions and then asked general questions about their visit to town.

A peace officer suspects an individual of possessing a controlled substance but does not have enough information to legally detain him. The officer approaches the person and asks if he would be willing to answer a few questions.

Non-cooperation

If people refuse to cooperate during a consensual encounter, the peace officer may not require them to do so. People must be allowed to leave unless the officer has obtained or developed sufficient additional information which would justify detaining or arresting them.

Elevating Consensual Encounters

Introduction

Peace officers will ensure they do not violate a person's Fourth Amendment rights during a consensual encounter by elevating it into a detention or arrest without legal justification.

Elevating actions

Certain actions may elevate a consensual encounter into a detention. Usually, peace officers can take alternate actions to avoid elevation.

Possible Elevating Actions	Alternate Actions
Using emergency lights	Using a spotlight rather than emergency lights
Selecting a position or placing the patrol vehicle so as to prevent the person or car from leaving	Selecting a position or location that does not obstruct the person or vehicle
Issuing orders or commands	Requesting consent; seeking voluntary cooperation
Using accusatory questioning or tone of voice	Using non-accusing, helpful, inquisitive tone of voice; requesting compliance rather than ordering it
Conducting cursory/pat searches without legal justification	Asking for consent to pat search
Demanding and/or keeping a person's identification	Requesting identification and returning it when finished or upon request

Continued on next page

Elevating Consensual Encounters, Continued

Examples

Officers saw two men walk past each other in an alley in an area with a lot of drug-trafficking. They believed the men would have met each other if the officers had not been there. This "looked suspicious" to the officers, so they contacted one of the men and asked for identification. When he refused, they ordered him to stay and investigated further. Refusal to cooperate, by itself, is not reason enough to detain, so the detention was illegal.

Late one evening, an officer observed someone sitting alone in a parked car in the empty parking lot of a closed business. Wishing to investigate, the officer drove up to the parked car. He turned on his emergency lights to identify himself as a peace officer. Because the officer's red light means "Stop," this was an illegal detention.

Elevation of contact

Elevating a consensual encounter by improper behavior can have negative legal and professional repercussions.

The peace officer could:

- violate the Fourth Amendment right against unreasonable searches and seizures, resulting in the suppression of evidence
- be civilly prosecuted for a violation of civil rights
- be criminally prosecuted for false imprisonment, or
- face agency disciplinary action

Detentions

Overview

Learning need

Peace officers must recognize that a temporary detention is an assertion of authority that is less than an arrest but more substantial than a consensual encounter.

Learning objectives

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

After completing study of this section, the student will be able to...	Objective ID
• differentiate between a detention and a consensual encounter	15.03.2
• recognize reasonable suspicion	15.03.3
• recognize appropriate peace officer actions during a detention	15.03.4
• recognize the scope and conditions for warrantless searches and seizures during a detention	15.03.5
• recognize conditions where the use of force or physical restraint is appropriate during a detention	15.03.6

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Overview, Continued

In this section

This section focuses on detentions. Refer to the chart below for a specific topic.

Topic	See Page
Detentions	2-23
Reasonable Suspicion for a Detention	2-26
Appropriate Actions During a Detention	2-29
Searches and Seizures During a Detention	2-33
Use of Force/Physical Restraints During a Detention	2-36

Detentions

Introduction

Peace officers may need to detain a person to investigate involvement in criminal activity. To be lawful, a detention must be based on *reasonable suspicion* that criminal activity has taken place, is taking place, or is about to take place, and that the person detained is connected to that activity.

Definition

A lawful **detention** requires *reasonable suspicion* of criminal activity.

A temporary detention or stop is an assertion of authority by a peace officer that would cause a reasonable person to believe they are *not free to leave*. Such a belief may result from physical restraint, unequivocal verbal commands, or other conduct by an officer.

A detention of a person is limited in scope, intensity, and duration. It is less than an *arrest* and more substantial than a *consensual encounter*.

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Consensual encounter vs. detention

Peace officers must be able to distinguish between a consensual encounter and a detention. The table below depicts some similarities and differences between a consensual encounter and a detention.

Consensual Encounter	Detention
An officer approached a man, known for selling drugs, in an alley and asked if they could talk. The officer proceeded to obtain general information from the man. The officer started filling out a field identification card and ran a records check, making small talk until the results came back.	An officer approached a man, known for selling drugs, in an alley and asked if they could talk. The officer proceeded to obtain general information from the man, and started filling out a field identification card. The man stated that he needed to leave, but the officer did not return his driver's license, continued to run a records check, and made small talk until the results came back. Because the officer kept the license, the man was not *free to leave*. The consensual encounter was elevated to a detention.

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Consensual encounter vs. detention (continued)

Consensual Encounter	Detention
Officers observed a man walking through a shopping center at 1:20 a.m. when all the stores were closed. They shined a spotlight on him, and one of the officers asked, "Is everything okay?"	Officers observed a man walking through a shopping center at 1:20 a.m. when all the stores were closed. They shined a spotlight on him, got out of their car, and one of the officers said, "Come over here. I want to talk to you." This "command" would make the suspect believe he was not free to leave. The initial contact would now be classified as a detention.

Examples

An officer made a vehicle stop for weaving within the lane. The officer determined that the driver was weaving because she spilled coffee in her lap. This was a lawful detention based on reasonable suspicion of a reckless driving violation.

While assigned to night foot patrol, a uniformed officer observed a man walking by a closed jewelry store. The man walked back and forth, looking at all corners of the window, as well as at the alarm box on the wall. The officer had been informed that there had been several “smash-and-grab” burglaries in the area. The officer approached the man and asked for identification. The man started to walk away without answering. The officer stepped in front of the man to prevent him from leaving the area. This is a legal detention.

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Reasonable Suspicion for a Detention

Introduction

Unlike a consensual encounter, peace officers must have a reason or factual basis they can articulate in order to lawfully detain a person. This basis is called reasonable suspicion.

Definition

Reasonable suspicion is when a peace officer has enough facts and circumstances present to make it reasonable to suspect that criminal activity is occurring and the person detained is connected to that activity.

Reasonable suspicion of criminal activity must exist to make a detention lawful.

Basis for reasonable suspicion

Reasonable suspicion may be based on observation, personal training and experience, or information from eyewitnesses, victims, or other officers (totality of the circumstances).

Reasonable suspicion cannot be based on a hunch or instinct. If reasonable suspicion is not properly established in a court of law, the case against the defendant may be dismissed or any evidence seized may be excluded from trial.

Contributing factors

Some factors that *contribute* to establishing reasonable suspicion are:

- appearance or condition of a person (intoxicated, resemblance to wanted person)
- actions (hiding objects, furtive movements, running from a crime scene)
- driving behaviors
- knowledge of the person's "history" (criminal record or conduct)
- demeanor (non-responsive, nervous)

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Reasonable Suspicion for a Detention, Continued

Contributing factors (continued)

- time of day (unusualness)
- location of the stop (near crime scene, known criminal activity in area)
- officer training and experience (modus operandi, expertise in certain area such as narcotics or gang activity)

NOTE: Flight by itself does not establish (reasonable suspicion) and can not justify a detention.

Examples

An officer observed a man and woman standing on a corner in an area known for high drug activity. The woman appeared nervous, slyly looking in all directions. The woman reached into her pocket and gave the man a baggie in return for something; he then walked away. The officer is justified in detaining the man and woman on reasonable suspicion of drug-dealing.

An officer was driving when a car passed him. The car swerved and almost hit another car. The officer had reasonable suspicion to stop the driver for vehicle code violations.

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Role of a reliable source

Peace officers can use information from others to investigate possible criminal action and detain those involved in that action. Information which triggers investigative action does not need to come from a source of proven reliability. A tip *may* support a detention if the surrounding circumstances make the information believable or if the reliable sources identity is known. A purely *anonymous* tip will normally *not* provide a sufficient basis to detain although it can be if there is sufficient collaboration or other indications of reliability.

Additionally, if the tip provides information or a person who poses a grave or more immediate risk to the public, such as driving under the influence, the detention can be upheld.

Appropriate Actions During a Detention

Introduction

Though a detention is considered to be a "seizure of the person," it does not intrude into a person's liberty as much as an arrest. To ensure that peace officers do not make illegal arrests, they are restricted in what actions they may take during detentions.

Investigative actions

Once officers have stopped or detained a person, they may take whatever investigative actions are reasonable under the circumstances to determine the person's possible participation in a crime.

Common actions

Common investigative actions include:

- questioning the person about identity and conduct
- contacting other individuals (e.g. witnesses) to confirm explanations, verifying identification, or determining whether the person is wanted (warrant check)
- checking premises, examining objects, or contacting neighbors or other individuals to determine whether a crime (e.g., burglary) actually occurred
- bringing the victim to the suspect for identification purposes

Example

A peace officer detained a robbery suspect based on a broadcast description of the person and the area of the robbery. The officer contacted the store clerk to identify the person. The detention was legal even if the clerk says the person is not the one who robbed the store.

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Appropriate Actions During a Detention, Continued

Length of detention

A detention must be temporary and last no longer than is necessary to resolve the reason for the stop. A detention legal at its beginning can become an illegal arrest if extended beyond what is reasonably necessary under the circumstances.

Often what officers see and hear during a detention (evasiveness, nervousness, conduct, property) will increase their suspicion, justify a longer detention, lead to investigation of a different offense, or possibly even provide probable cause for arrest.

If the person answers all questions about the suspicious circumstances satisfactorily, so that suspicion decreases or disappears, the person must be released.

Examples

A traffic stop, originally based on an excessively loud muffler, was properly prolonged to ascertain positive identification and vehicle ownership when the driver did not have a license, the car was not registered to any of the three male occupants, and the occupants gave conflicting answers to questions.

A peace officer detained a possible murder suspect. The officer confirmed the person's identity and alibi. The officer must release the person as the initial reason for the detention had been satisfied and no other suspicious behavior was observed.

Continued on next page

Transporting a person during detention

The person usually will be considered *under arrest* if transported, without consent, by a peace officer to a different location. Because of this, officers must be careful before transporting a detained person. Officers should not transport a person during a detention unless:

- the detainee gives permission
- it is impractical to bring the witness/victim to the detainee's location
- the conditions of the detention are dangerous to the person
- the conditions of the detention are dangerous to the officer(s)
- independent probable cause exists to arrest the subject

Continued on next page

Examples

An officer detained a person as a suspect in a battery. Because the badly beaten victim was still recovering in a nearby hospital, the officer may take the detainee to the hospital for the victim to view for identification purposes.

Two peace officers approached a group of men acting suspiciously on a corner known for drug activity. They asked the men for identification; one of the men was a known narcotics dealer. When the officers continued to question the known dealer, the other men began to get belligerent and verbally harassed the officers. The officers were justified in moving the detainee for their own safety.

Refusal to answer questions

A detainee is not obligated to answer any questions an officer may ask during a lawful detention. The refusal to answer questions alone does not provide probable cause for escalating a detention to an arrest.

NOTE: A person who flees from a lawful detention or intentionally gives misleading/incorrect answers may be arrested for violating *Penal Code Section 148* (resisting, delaying, or obstructing any officer), provided that the action delayed or obstructed the investigation. Not answering questions, however, is not a violation of law.

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Searches and Seizures During a Detention

Introduction

Usually, searches are not permitted during a detention. If officers have a factual basis to suspect that the person is carrying a concealed weapon, dangerous instrument or an object that can be used as a weapon, the officers are justified in conducting a cursory/pat search to protect the officers from an assault.

Scope of a cursory/ pat search

Cursory/pat searches are allowed to protect officers from an assault, but only if there are specific facts that cause the officers to feel endangered.

The scope of such a search is limited only to:

- a frisk of the outer clothing
- locate possible weapons
- a pat search is not a search for evidence or contraband

Once the officers realize an object is not a weapon, or an object that can be used as a weapon, the officers may not further manipulate the object; they must move on. Any additional feeling, grabbing, or manipulating of the item is outside the scope of a cursory/pat search for weapons and will be considered an illegal search.

Conditions

Peace officers must be able to articulate specific facts which caused them to reasonably believe the person might be carrying a weapon or dangerous instrument.

The following factors may support reasonable suspicion to believe the person may be carrying a weapon or pose a danger:

- person's clothing (e.g., a bulge in clothing, or wearing a heavy coat on a hot night)
- person's actions (e.g., trying to hide something or being overly nervous)

Continued on next page

Conditions (continued)

- prior knowledge of person for carrying weapons or of violent behavior
- isolated location so officers are unlikely to receive immediate aid if attacked
- time of day (e.g., a dark, moonless night may increase likelihood that the officer may be attacked)
- reason for detention (e.g., serious, violent, or armed offense)
- a similar cursory/pat search of a detainee's companion revealed a weapon
- ratio of individuals to officers

Discovery

If officers discover an object during a cursory/frisk which officers believe is a weapon, dangerous instrument, or hard object which could contain or be used as a weapon, the officers have a right to remove it from the person.

Discovered Item	Officer Action
Legal objects that could be used as a weapon (e.g., screwdriver, pocket knife)	The officer may remove it, keep it until the detention has concluded, then return it to the subject
A container that is capable of containing a weapon or dangerous instrument	The officer may remove and open the container

NOTE: If contraband is discovered during the weapons frisk, the officers should seize it, ask appropriate questions, place the person under arrest, and conduct a full custody search.

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Searches and Seizures During a Detention, Continued

Examples

A peace officer observed a person walking with a screwdriver in the area of a recent auto theft; the person matched a broadcast description which had been given. The dispatcher also indicated that the person was armed with a knife. The officer made contact with the person. The officer conducted a frisk and retrieved an illegal firearm. Upon further questioning, the person was found not to be involved in the original incident but could be arrested for possession of an illegal firearm.

After seeing a bulge under an individual's shirt, the officer conducted a frisk search of the person. Unable to determine the nature of the bulge, the officer began to manipulate the bulge to determine if it was a weapon.

Use of Force/Physical Restraint During a Detention

Introduction

Sometimes officers may have to use force or physical restraints to detain a person. The reasonableness of the use of force will determine whether the detention is elevated to an arrest or remains a detention.

Use of force or physical restraints

If a person attempts to leave during a detention, officers may use reasonable force and/or physical restraints to compel the person to remain. The use of force does not necessarily elevate the detention to an arrest. Uncooperative individuals may be:

- handcuffed
- placed in a patrol vehicle

Examples

A lawfully detained person began to get nervous during questioning, looked around, and started to walk off; the officer ordered the person to stay. When the person continued to walk off, the officer went after him, grabbed him by the arm, escorted him to the squad car, and placed him in the back seat.

When a peace officer started checking whether the person she had detained had an outstanding warrant, the person turned and ran. The officer chased him and grabbed him. When he continued to struggle, the officer handcuffed him, walked him back to her car, and confirmed the outstanding warrant.

Continued on next page

Arrests

Overview

Learning need

Peace officers must know and comply with the statutory rules of arrest in order to properly exercise their authority and responsibility while avoiding liability when making arrests.

Learning objectives

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

After completing study of this section, the student will be able to . . .	Objective ID
• recognize when there is probable cause to arrest	15.04.2
• identify elements of a lawful arrest	15.04.3
• differentiate between arrest and a detention	15.04.4
• recognize information that must be given to an arrested person	15.04.5
• recognize elements of a warrantless arrest for a misdemeanor	15.04.6
• recognize elements of a warrantless arrest for a felony	15.04.7
• recognize elements of a warrant arrest	15.04.8
• recognize the requirements for entry into a dwelling to make an arrest	15.04.9

Continued on next page

Learning objectives (continued)

After completing study of this section, the student will be able to . . .	Objective ID
• recognize the authority for a private person arrest and the peace officer's duty in response to a private person arrest	15.04.10
• recognize conditions under which the use of force or physical restraint is appropriate during an arrest	15.04.11
• recognize the statutory requirements for the disposition of an arrested person	15.04.12
• recognize the exception(s) to the powers to arrest	15.04.13

Continued on next page

In this section

This section focuses on identifying and classifying statutory law related to the authority to arrest and release individuals. Refer to the chart below for a specific topic.

Topic	See Page
Probable Cause for Arrest	2-40
Elements of a Lawful Arrest	2-43
Information Given to an Arrestee	2-45
Warrantless Arrests for Misdemeanors and Felonies	2-47
Warrant Arrests	2-51
Entry Into a Dwelling to Make an Arrest	2-53
Private Person Arrests	2-56
Use of Force/Physical Restraints During an Arrest	2-60
Disposition of the Arrestee	2-61
Immunity and Statute of Limitations	2-65

Probable Cause for Arrest

Introduction

The Fourth Amendment of the U.S. Constitution requires probable cause to make arrests and/or conduct searches because searches or arrests conducted without probable cause infringe on a person's privacy.

Leadership

Peace officers must know the law and the proper methods of enforcement. They are aware of any available options regarding the decision to arrest and how to apply them.

Definitions

Arrest is taking a person into custody, in a case and in the manner authorized by law. *(Penal Code Section 834)*. The arrest must be based on probable cause.

Probable cause for an arrest is a set of facts that would cause a person of ordinary care and prudence to entertain an honest and strong belief that the person to be arrested is guilty of a crime. Probable cause is required before an arrest is made and is based on the totality of the circumstances.

Facts required to establish probable cause may include, but are not limited to:

- direct investigation or reports
- circumstantial evidence
- second-hand statements from reliable sources

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Reasonable suspicion vs. probable cause

Probable cause is a higher standard of suspicion than reasonable suspicion. However, factors that contribute to establishing reasonable suspicion can also be used to establish probable cause, or it can escalate into probable cause.

Factors for Reasonable Suspicion	Probable Cause to Arrest
possible influence of alcohol or drugs	illegal level of intoxication
actions/words/demeanor during detention	self-incrimination, contraband
erratic driving behaviors	DUI, contraband
Pat search for weapons	possession of illegal weapons or contraband
possible connection to burglary	discovery of stolen property

Officer training and experience

Peace officers' expertise is part of the equation for determining probable cause. For officers versed in a specific field of law enforcement, an activity which might otherwise appear innocent may provide probable cause to a trained eye.

Continued on next page

Probable Cause for Arrest, Continued

Example

An officer stopped Smith's car for a traffic violation and as he approaches the car, observes a card board box in the back seat. The box contained glass beakers and flasks with a white residue. The officer's training and experience enable him to recognize the contents of the box as items commonly used to manufacture methamphetamine and the officer makes an arrest.

Elements of a Lawful Arrest

Introduction

An arrest is considered a *full seizure* of a person under the Fourth Amendment because it takes away a person's liberty. Federal and California law establishes the authority to arrest and the information that must be provided to a person being arrested.

Elements of a lawful arrest

The following chart lists the elements of a lawful arrest and the appropriate California Penal Code Sections.

Elements of a lawful arrest	***Penal Code Section***
An arrest may be made by a peace officer or private person.	*834*
The arrested person must be taken into custody, in a case and in the manner authorized by law.	*834*
An arrest may be made by actual restraint of the person, or by the person's submission to the officer's authority.	*835*
Reasonable force may be used to make an arrest, prevent escape, or overcome resistance.	*835a*

Difference between an arrest and a detention

An arrest is the taking of a person into custody, in a case and in the manner authorized by law. *Custody* is the key word; it implies the person making the arrest has full control.

A detention or stop is an assertion of authority that would cause a reasonable person to believe they are not free to leave. A detention is limited in scope, intensity, and duration.

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Elements of a Lawful Arrest, Continued

Peace officer authority to arrest

Penal Code Section 836 establishes the legal basis for an arrest by peace officers. Officers may make an arrest:

- pursuant to a warrant
- without a warrant
  - whenever they have probable cause to believe the person to be arrested has committed a public offense (felony or misdemeanor) in their presence
  - when the person arrested has committed a felony, although not in the officer's presence
  - whenever they have probable cause to believe the person to be arrested has committed a felony, whether or not a felony has in fact been committed

In the officer's presence

In the officer's presence is liberally construed by the courts to include what is apparent to the officer's senses, such as hearing, sight, and smell.

Also, the officer can enhance his or her senses by using certain devices or objects, such as binoculars, a flashlight, a dog, a telephone, etc. However, the United States Supreme court has ruled the warrantless use of some thermal imaging devices constitutes a search.

Information Given to an Arrestee

Information required at time of arrest

California Penal Code Section 841 requires that any person making an arrest must convey certain information to the individual arrested at the time of the arrest. The three things that must be explained are:

- intent
- cause
- authority

Item	Description
Intent	The arresting person must tell the individual that he or she is being arrested
Cause	The arresting person must state the reason for the arrest (e.g., an outstanding warrant, or the name of the offense)
Authority	- A non-uniformed officer must show identification - A uniformed officer and/or marked car satisfies this requirement (no ID required) - A private person must state his or her authority to make the arrest

NOTE: A peace officer arresting or detaining a foreign national for more than two hours must advise the individual that they have the right to contact their consulate (except as specified); and the officer's agency must notify the consulate of the arrest or detention. (*Penal Code Section 834(c)*)

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Information Given to an Arrestee, Continued

Exceptions

There are two situations when the arresting person is not required to provide the individual with the intent, cause, and authority of the arrest. These are when the individual to be arrested is:

- actually committing the offense
- attempting to escape

Examples

Upon serving an arrest warrant, the uniformed officer stated the individual was under arrest for sexual assault. The officer did not need to state his authority since he was in uniform.

A store owner caught a young woman shoplifting perfume. He held her arm and stated under the authority of the California Penal Code he was making a private person's arrest for shoplifting.

Warrantless Arrests for Misdemeanors and Felonies

Introduction

A warrantless arrest is a violation of the Fourth Amendment unless it is supported by probable cause. Peace officers must comply with numerous statutory requirements.

Conditions for warrantless felony arrests

Peace officers may make a warrantless *felony* arrest whenever they have probable cause to believe the person to be arrested has:

- committed a felony in the officer's presence. *(Penal Code Section 836(a)(1)),* or
- committed a felony, although not in the officer's presence. *(Penal Code Section 836(a)(2)),* or
- committed a felony, regardless of whether or not the felony was, in fact, committed. *(Penal Code Section 836(a)(3))*

Conditions for warrantless misdemeanor arrests

Peace officers may make a warrantless *misdemeanor* arrest whenever they have probable cause to believe the person to be arrested committed the misdemeanor in their presence. *(Penal Code Section 836(a)(1))*

The officer may make a warrantless arrest if there is probable cause even though a misdemeanor was not committed in the officers presence in the following circumstances:

- committed by a juvenile. *(Welfare and Institutions Code Section 625),* or

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Conditions for warrantless misdemeanor arrests (continued)

- any of the following seven violations:
  - driving while under the influence. *(Vehicle Code Sections 40300.5* and *40600),*
  - carrying a loaded firearm on an individual's person or in a vehicle while in any **public place** or on any public street. *(Penal Code Section 25850(a),*
  - violating a domestic protective or restraining order, when the officer was responding to a call alleging the same. *(Penal Code Section 836(c)),* (Mandatory arrest)
  - committing an assault or battery on a spouse, cohabitant, or a parent of their child. *(Penal Code Section 836(d)),*
  - committing an assault or battery on school property while school is in session. *(Penal Code Section 243.5),*
  - committing an assault or battery against a working firefighter, emergency medical technician, or mobile intensive care paramedic. *(Penal Code Section 836.1),* or
  - carrying a concealed firearm at an airport. *(Penal Code Section 836(e)(1)(2))*

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Warrantless Arrests for Misdemeanors and Felonies,
Continued

Examples

An officer received a radio dispatch of drug activity in front of an apartment complex. The officer arrived within two minutes and, from a nearby alley, surreptitiously watched the people in front of the complex. When a backup unit came into view, the officer observed an individual watch it approach, then walk in the opposite direction, take a baggie of white powder and three hypodermic syringes from his person and hide them in a bush. The officer had probable cause for a warrantless felony arrest.

An officer responded to a domestic violence call and found a woman whose ex-boyfriend admitted hitting her. The woman did not want to press charges and was unwilling to make a citizen's arrest. The officer could make a valid arrest for misdemeanor battery because of probable cause, and *Penal Code Section 836(c)* provides an exception to the "in your presence" requirement.

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Warrantless Arrests for Misdemeanors and Felonies,
Continued

Time of arrest

Warrantless arrests for felonies may take place at any time of day or night on any day of the week. *(Penal Code Section 840)*

Warrantless arrests for misdemeanors or infractions must be made between the hours of 6 a.m. and 10 p.m. *(Penal Code Section 836)*, unless the person:

- commits the crime in the officer's presence
- is arrested in a public place
- is already in custody pursuant to another lawful arrest

NOTE: A public place is a location readily accessible to all those who wish to go there including law enforcement. A key consideration is whether a member of the public can access the place "without challenge." Thus, a property with a locked fence is not readily accessible. Other things, such as dogs, in yard show public is not welcome.

Exemption from prosecution

Officers acting within agency policy and lawful scope of their authority are protected from prosecution for false arrest or imprisonment for both warrant and warrantless arrests.

Warrant Arrests

Introduction

Arrest warrants are generally required to arrest an individual inside their residence. Arrest warrants permit *any* officer to make the arrest, since probable cause has already been established. However, there may be exceptions depending on whether the warrant is for a felony or a misdemeanor.

Definition

An **arrest warrant** is a written order signed by a magistrate which directs and commands a peace officer to arrest the person named in the warrant for the offense named in the warrant.

In order to obtain an arrest warrant, the officer must establish probable cause. This is usually done through a sworn statement (affidavit) filed as part of the formal complaint process.

Arrest warrant contents

Arrest warrants are required by *Penal Code Section 815* to contain the following information:

- name of the defendant
- crime the defendant is suspected of committing
- time the warrant is issued
- city or county where the warrant is issued
- signature of the issuing authority with the title of office
- name of the court or other issuing agency
- amount of bail

Absent consent, exigencies, parole, or searchable probation, an arrest warrant is necessary to lawfully enter a dwelling to make an arrest.

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Pre-complaint warrants

Penal Code Section 817 allows a peace officer to obtain an arrest warrant *before* a criminal complaint has been filed.

Pre-complaint warrants (also known as *Ramey* warrants) are an alternative to the complaint/warrant procedure. Pre-complaint warrants contain the same information as other arrest warrants and are also issued based on sworn statements (affidavits) establishing probable cause.

Obtaining a pre-complaint warrant

The process for obtaining a pre-complaint warrant includes the following actions:

- the peace officer makes a written or oral statement of probable cause (affidavit)
- a magistrate evaluates the information in the affidavit to assess whether probable cause for arrest exists
- upon the magistrates finding of probable cause, an arrest warrant is issued
- the subject named in the warrant is arrested
- a criminal complaint may subsequently be filed pursuant to *Penal Code Section 849*

Time of arrest

Warrant arrests for felonies may be made at any time of day or night on any day of the week. *(Penal Code Section 840)*

Warrant arrests for misdemeanors must be made between the hours of 6 a.m. and 10 p.m. unless the warrant is endorsed for nighttime service. *(Penal Code Section 840)*

Entry into a Dwelling to Make an Arrest

"Knock and notice"

Before entering a private dwelling to make an arrest, an officer needs 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.

Lawful access to private property is most commonly obtained when the:

- officer's entry is based on *consent*
- 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
- an 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.)

Knock and notice means that before entering a dwelling to make an arrest, *with or without a warrant*, officers must give notice to the person inside. *(Penal Code Section 844).* A private dwelling can be any place the person resides (not just houses or apartments) or areas of a business not open to the general public.

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Knock and notice procedure

Peace officers must follow the prescribed procedure for knock and notice:

- announce their presence
- identify themselves as peace officers
- state their purpose
- demand entry
- wait a reasonable amount of time (based on circumstances)
- if necessary, forcibly enter premises

Knock and notice exceptions

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.

Continued on next page

Entry into a Dwelling to Make an Arrest, Continued

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.

Private Person Arrests

Introduction

A private person may arrest an individual for any public offense (felony, misdemeanor, or infraction) committed in their presence. In addition, a private person may arrest an individual if a felony actually has been committed and the arresting person has probable cause to believe the individual committed the felony.

Conditions

A private person is authorized to make both felony and misdemeanor arrests. *(Penal Code Sections 834 and 837)*. The conditions under which private person arrests can be made are similar to peace officer arrests regarding the use of force and the information that must be supplied to the arrested person. *(Penal Code Section 841)*

Required actions

According to *Penal Code Section 847*, when making a private person arrest, the person is, without unnecessary delay, required to:

- take the person before a magistrate
- deliver the arrested person to a peace officer

Private searches and seizures

The Fourth Amendment protects citizens from unreasonable searches and seizures by *government* personnel or their agents. The Fourth Amendment does not apply to a *private person*. Evidence obtained as a result of searches and seizures by a private person will not normally be suppressed

NOTE: A private person can make warrantless *entries* only for felonies.

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Examples

A peace officer arrived at the scene where two shopkeepers were confronting a young man whom they saw spray-painting their alley windows. The shopkeepers informed the man he was under arrest for vandalism. The peace officer then assisted in the physical apprehension of the young man and took custody of him.

A man saw a woman breaking into a car in a shopping mall parking lot. He confronted the woman and told her he wanted her to accompany him to the mall security station. The woman tried to run off; the man grabbed her, confiscated her belongings, and took her to the security office where she was handcuffed, and the police were called.

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Receiving a private person arrestee

Penal Code Section 142 states: "Any peace officer who has the authority to receive or arrest a person charged with a criminal offense and willfully refuses to receive or arrest that person shall be punished by a fine not exceeding ten thousand dollars ($10,000), or by imprisonment in the state prison, or in a county jail not exceeding one year, or by both that fine and imprisonment."

Disposition

After an officer "receives" someone who has been arrested by a private person, the private person has no further say in the matter. The officer has three different ways to proceed, as indicated in the table below.

Option	Explanation
Release	Release the person, unconditionally, if the officer is satisfied there are insufficient grounds for filing a criminal complaint *(Penal Code Section 849(b)(1))* NOTE: A release under this section must be documented with a signed certificate indicating the arrest will be deemed to have been a detention. *(Penal Code Sections 849(c)* and *851.6)*
Issue a citation	The officer can issue a citation (signed promise to appear) if the arrest was for a misdemeanor, if the arrestee does not demand to be taken before a magistrate, and none of the statutory reasons for denying release exist *(Penal Code Section 853.6(i))* NOTE: Depending on agency policy, the private person may be required to sign as the "arresting party."

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Disposition (continued)

Option	Explanation
Take the arrested person to a magistrate	The officer can take the person "to the nearest or most accessible magistrate," *(Penal Code Section 849(a))*, if one is available NOTE: Otherwise, the officer can take the person to jail for booking and either bail or arraignment and then file a criminal complaint.

Exemption from prosecution

An officer who "receives" an arrested person may not be held civilly liable for false arrest or imprisonment. *(Penal Code Section 836.5)*

Use of Force/Physical Restraint During an Arrest

Introduction

Individuals are not permitted to resist arrest by peace officers because they can take legal and/or civil action for a false arrest. Some individuals do resist arrest, and peace officers may have to use physical restraints.

Penal code authority

Penal Code Section 835a authorizes peace officers to use force that is reasonable and necessary to make an arrest, prevent escape, or overcome resistance.

Examples

Two officers observed a robbery suspect flee the store. The officers chased him, wrestled with him for five minutes before subduing him, handcuffed him, and walked him back to their police car. This is reasonable force.

While being arrested for bank robbery, the individual tried to flee. The officer lightly touched him, causing the individual to lose his balance and fall; the individual broke his wrist during the fall. The amount of force applied by the officer was still considered within reason. It is the officer's conduct, not the injury itself, that must be considered.

Disposition of the Arrestees

Introduction

Upon arresting a person, peace officers must follow statutory requirements to ensure the arrestee's rights are not violated. The nature of the offense and the presence or the absence of a warrant dictate how peace officers handle the arrestee.

Disposition of arrestees

Statutes provide different means of handling or "disposing" of arrestees, depending on the nature of their offenses (infraction, misdemeanor, or felony) and the manner of arrest (warrant or warrantless).

Compliance with warrant

If the arrest is made *pursuant to a warrant* (felony or misdemeanor), the arresting officer must proceed with the arrestee as commanded in the warrant. *(Penal Code Section 848). For misdemeanors only*, this may include cite and release or transport to jail. *(Penal Code Section 827.1)*

Infractions

A person arrested for an *infraction* is normally **cited** and released, although the arrestee must sign a written promise to appear. *(Penal Code Section 853.5)*

A person arrested for an infraction may be taken into custody if he or she fails to present satisfactory identification, refuses to sign the written promise to appear, or if any of the exceptions listed in *Penal Code Section 853.6* exist.

Warrantless misdemeanor arrests and release

Penal Code Section 853.6 requires, with some exception, that a person *arrested without a warrant* for *misdemeanor* offenses be cited and released in lieu of custody. Once arrestees sign a written promise to appear or post a bail bond, they are released.

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Exceptions to misdemeanor cite and release

Whenever any person is arrested by a peace officer for a misdemeanor, that person shall be released according to the procedures set forth by this section unless one of the following is a reason for non-release, in which case the arresting officer may release the person, or the arresting officer shall indicate, on a form to be established by his or her employing law enforcement agency, which of the following was a reason for non-release. *(Penal Code Section 853.6(i))*:

- The person arrested was so intoxicated that he or she could have been a danger to himself or herself or to others.
- The person arrested required medical examination or medical care or was otherwise unable to care for his or her own safety.
- The person was arrested under one or more of the circumstances listed in Sections 40302 and 40303 of the Vehicle Code.
- There was one or more outstanding arrest warrants for the person.
- The person could not provide satisfactory evidence of personal identification.
- The prosecution of the offense or offenses for which the person was arrested, or the prosecution of any other offense or offenses, would be jeopardized by immediate release of the person arrested.
- There was a reasonable likelihood that the offense or offenses would continue or resume, or that the safety of persons or property would be imminently endangered by release of the person arrested.
- The person arrested demanded to be taken before a magistrate or refused to sign the notice to appear.
- There is reason to believe that the person would not appear at the time and place specified in the notice. The basis for this determination shall be specifically stated.
- The person was subject to Section 1270.1.

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Disposition of the Arrestees, Continued

Domestic violence/ abuse exceptions

Officers are *required* to take the person before a magistrate, rather than cite and release, if the arrest:

- is for a misdemeanor violation of a protective court order involving domestic violence as defined in *Penal Code Section 13700*
- is pursuant to agency policy for responding to domestic violence calls per *Penal Code Section 13701*

Warrantless arrest releases

When officers arrest a person *without a warrant* for a felony or misdemeanor and the person is not otherwise released, the officers must take the person "to the nearest or most accessible magistrate," *(Penal Code Section 849(a))*, if one is available. Otherwise, the officers must take the person to jail for booking and either bail or arraignment and the filing of a criminal complaint.

However, *Penal Code Section 849(b)* lists three situations where an officer may release a person who was arrested without a warrant. Those situations exist:

- when there are insufficient grounds for criminal complaint
- when the person was arrested for intoxication only and no further proceedings are desirable
- when the person was arrested only for being under the influence of a controlled substance or drug, is delivered to a treatment facility or hospital, and no further proceedings are desirable

Probable cause determination

Individuals arrested *without* a warrant must be given a *judicial* determination of probable cause within 48 hours after the arrest, including weekends and holidays.

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Disposition of the Arrestees, Continued

Phone calls

After being booked, and within three hours of being arrested, an arrested *adult* must be allowed to make at least three completed phone calls. *(Penal Code Section 851.5)*

Juveniles are allowed at least two phone calls immediately on being taken into custody. *(Welfare and Institutions Code 627).* The opportunity to use the telephone should be provided as soon as practical.

Any officer who deprives an arrested person of the right to make telephone calls is guilty of a misdemeanor. *(Penal Code Section 851.5(f))*

Visitation privileges

After a person has been arrested, any attorney licensed to practice law in California, upon the request of the arrested person or the arrested person's relatives may visit any time of the day or night. Any officer who willfully refuses to allow an attorney to visit can be charged with a misdemeanor and "shall forfeit" $500 to the aggrieved party. *(Penal Code Section 825(b))*

A physician, surgeon, or an attorney who is employed by the arrested person in preparation for the defense is allowed to visit at any time. *(Penal Code Section 825.5)*

Immunity and Statute of Limitations

Introductions

There are circumstances when a person has committed a crime and cannot be arrested. These exemptions are based on case law and statutory law.

Related terms

Immunity is an exemption from a duty or penalty.

A **diplomatic agent** is an official appointed by a government to reside in a foreign country to represent the *political interests* of citizens of the appointing country.

A **consular officer** is an official appointed by a government to reside in a foreign country to represent the *commercial interests* of citizens of the appointing country.

The **consular service staff** are people who work for the consular officer in a foreign country.

NOTE: There are various levels of **diplomatic immunity** for foreign diplomats in the United States. Those with *full* diplomatic immunity may not be prosecuted for any crimes they commit. Those *without* full immunity may be arrested and prosecuted.

Stale misdemeanor

A **stale misdemeanor** exists when an adult commits a misdemeanor in another person's presence (including a peace officer) and the person fails to arrest the adult within a reasonable time thereafter.

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Stale misdemeanor (continued)

A *reasonable time thereafter* normally means the person must have been in continuous fresh pursuit of the individual until the arrest is made. If no arrest is made during that time, the individual can no longer be arrested without an arrest warrant.

If an officer sees an individual after that time, the officer may detain the individual and gather information for a warrant. A private person can make a complaint to a peace officer which may result in a warrant.

Examples

An officer saw a young man painting graffiti on the side of a building. The man saw the officer and ran. The officer pursued the man, but lost him after a few blocks. Two days later, the officer saw the man again. The officer may not arrest him but can detain him for warrant information.

A man got into an argument with his neighbor, and the neighbor shoved him. The following day, the man thought about the incident and decided to arrest his neighbor. At this point, the man can file a complaint against his neighbor, but he cannot arrest him.

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Statute of limitations

Suspects for most crimes must be arrested within a certain time limit called the **statute of limitation**, as shown in the chart below.

Crime	Statute of Limitation
most misdemeanors	one year
most felonies	three years
crimes punishable by death or life imprisonment	no limit
sex crimes, crimes against children, and others	can vary according to the crime

NOTE: Even though the statute of limitation has expired, this does not preclude the officer from conducting an investigation, notifying detectives, or seeking advice from a district attorney.

Administration of the Miranda Warning

Overview

Learning need

When conducting a custodial interrogation, peace officers must follow Miranda procedures to ensure that any answers they obtain will be admissible in court.

Learning objectives

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

After completing study of this section, the student will be able to . . .	**Objective ID**
• identify the purpose of the Miranda warning(s)	15.05.1
• recognize when Miranda warnings must be given	15.05.2
• identify the proper administration of Miranda warnings	15.05.3
• recognize the impact of invoking: - the right to remain silent - the right to counsel	15.05.4
• recognize the types of Miranda waivers	15.05.5
• recognize the exception(s) to the Miranda rule	15.05.6

Continued on next page

In this section

This section focuses on when and how to administer Miranda warnings. Refer to the chart below for a specific topic.

Topic	See Page
The Miranda Warning	2-71
When the Miranda Warning is Required	2-72
Waiving or Invoking Miranda Rights	2-76
Exception to the Miranda Rule	2-83

The Miranda Warning

Purpose of Miranda warning

The Fifth Amendment of the U.S. Constitution states that:

> **No person . . . shall be compelled in any criminal case to be a witness against himself.**

In *Miranda vs. Arizona* (1966), the United States Supreme Court ruled that unless certain warnings are given to the suspect first, any statement made during custodial interrogation will be viewed as "compelled" because of the inherently coercive atmosphere that exists and that statement(s) would be inadmissible in a court room proceeding.

The Supreme Court set forth four advisements known as the **Miranda warning**, which a peace officer must give to a person at the start of custodial interrogation.

Miranda warning

Minimally, the following advisements must be provided to a person subjected to custodial interrogations.

- You have the right to remain silent.
- Anything you say may be used against you in court.
- You have the right to an attorney before and during questioning.
- If you cannot afford an attorney, one will be appointed for you free of charge, before questioning, if you wish.

When the Miranda Warning is Required

Introduction

The Miranda warning and a valid waiver of those rights are required before any *custodial interrogation*. Custody and interrogation must *both* exist before the Miranda warning is necessary.

Custody

Custody means a formal arrest or its "functional equivalent." It is *objectively* determined by the totality of circumstances. People are in custody for Miranda purposes when they have been:

- actually placed under arrest
- subjected to the kinds of restraints associated with a formal arrest (e.g., handcuffs, guns, lockups, etc.)

NOTE: Because there is no "custody" (actual arrest or equivalent restraints), the Miranda warning is not required before interrogating a person who has been detained, for example, during a routine traffic stop, even though the person is not free to leave.

Interrogation

Interrogation occurs when a peace officer:

- engages in direct/express questioning of a person about a crime
- uses words or conduct reasonably likely to elicit an incriminating response from a person

Not all questioning is "interrogation." For example, routine booking questions are not interrogation. Neither are casual comments by custodial officials.

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When the Miranda Warning is Required, Continued

Miranda not required

The Miranda warning is not required unless both *custody* and *interrogation* exist at the same time. In the absence of formal arrest or equivalent restraints, Miranda custody does not exist.

Without *interrogation*, peace officers are not required to give a person their Miranda rights, even if there is custody. Without *custody*, the officers need not give the Miranda warning, even if they are about to interrogate the person.

CUSTODY + INTERROGATION = NEED FOR THE MIRANDA WARNING

Examples

After announcing themselves as peace officers, two officers entered a person's room with their guns drawn. Because of the arrest-like restraints (drawn guns), the person was considered to be in Miranda custody. Before the officers may begin asking questions regarding the specific crime, they must give the person the Miranda warning.

A man sold a stolen car to his friend. Later, an officer arrested the man. After some remarks about what the man could expect in jail, the officer said to him, "That was sure a cold thing you did to your friend, selling him that hot car." This was interrogation because the officer's remark, though not strictly a question, was likely to elicit an incriminating response.

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When the Miranda Warning is Required, Continued

Volunteered statements

Statements volunteered by a person, and *not as a direct result of interrogation by the peace officer*, are not affected by Miranda. Statements may be volunteered in any setting, such as:

- during a consensual encounter
- during a detention
- during an arrest
- during the booking process
- during forensic testing or transportation
- after the person has invoked the Miranda right(s)

Examples

Volunteered statements are admissible as evidence. For example:

- after a person asked for a lawyer, he said "I just want to say, off the record, I didn't mean to kill that dude"
- an arrestee tells the jailer: "Off the record, I'm guilty as sin"

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When the Miranda Warning is Required, Continued

Privilege against self-incrimination

The Fifth Amendment privilege against self-incrimination applies to *testimonial* communication only.

This privilege is not violated by requiring the person to provide:

- handwriting samples
- voice samples for analysis
- body fluids or other samples for analysis

In addition, this privilege is not violated if the person is asked to:

- model articles of clothing
- participate in a lineup
- submit to routine fingerprinting
- repeat a statement for voice identification

Consequences of not administering Miranda

Peace officers need to realize that if they fail to follow the Miranda procedures, any statement they may obtain during custodial interrogation may be inadmissible against the person at the criminal trial to prove guilt.

Waiving or Invoking Miranda Rights

Introduction

Once officers read the Miranda warning and have ensured that the person understands it, the person may either **waive** (give up) or **invoke** (assert) their Miranda rights. A person has two rights he or she can waive or invoke under Miranda: the right to remain silent and the right to have counsel present during interrogation.

Elements of Miranda

There are three elements in the Miranda process. They are:

- advisement of the Miranda warning by the officer
- understanding of the warning by the person
- waiver or invocation of the Miranda rights (silence and counsel) by the person

The Miranda process

The person must understand all four advisements of the Miranda warning. To determine this, the officer can ask the person about understanding after each advisement or ask one time after each advisement has been given. Once a person has acknowledged their understanding of the warning, they must go on to either waive (give up) their Miranda rights or invoke one or both of them.

Miranda Phase	Included in the Phase
Warning	Includes informing a person of: - the right to remain silent - the fact that any statement made may be used against them in court - the right to have an attorney present before and during any questioning - the fact that an attorney will be provided if the person cannot afford one

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The Miranda process (continued)

Miranda Phase	Included in the Phase
Understanding	A person must understand the meaning of each advisement
Waiving or invoking rights	A person must knowingly and voluntarily either waive their rights to silence and counsel or must invoke one or both of these rights

Waivers

Only if a valid waiver is obtained will answers to questioning be admissible in court. A waiver can be either expressed or implied, but must always be *knowing* and *voluntary*.

Validity of waiver

For a waiver to be knowing, the person must have fully comprehended the four advisements, that is, must understand the nature of the rights he is giving up and the consequences of waiving them. ("Knowing" and "intelligent" both have this same definition and express a single concept.)

For a waiver to be *voluntary*, it must be the result of a free and deliberate choice and *not* the result of coercion, i.e., any force, threats, or promises of leniency (whether express or implied), or any kind of tricks, cajoling, or "softening up" by the peace officers. If a waiver is ruled *in*voluntary, any statements obtained afterward will not be admissible at trial to prove guilt.

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Types of waivers

A valid waiver of rights may be either expressed, implied, or conditional. The following chart explains the difference between these types of waivers.

Type of Waiver	Person's Action	Example
expressed	answers yes/no question about going forward with the questioning	After giving advisements and ensuring understanding, the peace officer asks, "Can we talk about what happened?"
implied	acknowledges understanding the advisements, and exhibits conduct indicating waiver of rights	The peace officer starts asking questions and the person answers
conditional	acknowledges understanding the advisements and is willing to go forward, but places a limitation/ qualification on answering questions	The person: - refuses to give a written statement, - refuses to be tape recorded, - answers some questions but not others, - refuses to speak to one specific officer but not others, or - refuses to answer questions until a specific amount of time has lapsed but - will go forward if this condition is met

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Examples

While talking to a murder suspect, after giving the Miranda warning, two sheriff's deputies told the suspect they wanted to help prevent him "from getting the death penalty." They also told him about a "hypothetical" case where the individual who had cooperated with the police got charged with manslaughter instead of murder. The suspect waived his rights and made a tape-recorded confession. The waiver was invalid since it resulted from improper coercion, threats, and promises of leniency.

A person, who was *very* drunk at the time he was informed of his rights and waived them, gave an incriminating statement to officers. The court could determine that the person did not have "the requisite free will and rational intellect" to knowingly waive his rights.

Invoking Miranda rights

A person may invoke the right to silence or the right to counsel only at the time of, or during, police custodial interrogation. Unless custody and interrogation both exist at the same time, there are no Miranda rights to invoke.

However, if these conditions both exist and the person invokes either the right to silence or the right to counsel, Miranda requires that *all interrogation must* cease.

Some differences between these two rights exist concerning how they are invoked and whether the peace officer may later try to reinitiate interrogation.

NOTE: Miranda rights are personal to the person and may not be invoked by anyone else on his or her behalf, including an attorney or a parent.

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Right to remain silent

The right to remain silent may be invoked by *any words or conduct* which reflect an unwillingness to discuss the case.

Once a person invokes the right to *silence*, Miranda requires that all interrogation must cease. However, there are circumstances where reinitiation by the peace officer may produce an admissible statement. These circumstances include:

- a period of time has gone by
- the officers have some new information
- the officers want to ask about a different crime

In any such "try again" situation, there would have to be full readvisement per Miranda and a valid waiver, with no pressure from the officer.

Right to counsel

Unlike the right to silence, a person's invocation of the Miranda right to have an attorney present or to speak to an attorney can only be invoked by a *clear and express* request for an attorney.

Once the Miranda right to *counsel* has been asserted, all interrogation must cease. There are *no* circumstances, except for the actual presence of the attorney, where reinitiation by the officer is proper for as long as the person remains in custody. This is true even where officers from a different agency wish to interrogate the person about a different crime.

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Examples

When an officer asked the person if, having the Miranda advisements in mind, he wanted to talk, the person said, "Not really." This amounted to an invocation of the person's right to *silence*.

When an officer gave a jailed person the Miranda warning, the person stated he wanted to talk to an attorney. Because the person had invoked his right to *counsel*, officers could not interrogate him to obtain an admissible statement without his lawyer being present.

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When a suspect reinitiates questioning

Because Miranda rights are personal, *suspects* may change their mind. For example, suspects may reinitiate or express a desire to make a statement, even though they earlier invoked the right to silence or counsel. Under such circumstances, the officer should:

- re-admonish the person with Miranda warnings
- obtain a valid *express* waiver
- then interrogate further
- make a verbatim account of the reinitiation and any statement given

Documentation

Because of the different reinitiation rules, peace officers should always document whether a person has waived or invoked their right to *silence* or their right to *counsel*. This will protect other officers from inadvertently reinitiating contact with the person and possibly violating Miranda's requirements.

Juveniles in custody

Miranda applies the same to minors as adults. The courts have found no difference in application. A juvenile does *not* have the right to have an adult present, and any request for one is not *automatically* either an invocation of the right to silence or the right to an attorney.

However, California has a statute *(Welfare and Institutions Code Section 625)* that requires an officer to give Miranda warnings "in any case where a juvenile is taken into temporary custody." This requirement exists even when the juvenile is not going to be interrogated. If the minor is not going to be interrogated, the statute does not require that the minor understands the warnings or any waiver of rights, but rather just the advisements.

Exception to the Rule of Miranda

Introduction

There is one exception to the general Rule of Miranda when a person is in custody and about to be interrogated. It is known as the *public safety* or *emergency rescue* exception, and it is based on exigent circumstances.

Public safety exception

No Miranda warning is necessary, even though a person is in custody, if the officer who is about to ask incriminating questions (interrogate) is motivated by a concern for someone's safety.

The concern for safety can be for the victim, the defendant, some third person, the public at large, or the officer's own safety. Courts view this exception rather narrowly.

Examples

Miranda did not apply to a hostage situation where the person was holding a wounded hostage at gunpoint.

Miranda did not apply where an armed person, who had been apprehended inside a busy supermarket and had apparently discarded his gun somewhere in the store, was asked where the gun was located.

Crime Scene Interviews and Investigative Interrogations

Overview

Learning need

To develop admissible evidence while ensuring the constitutional rights of all individuals, peace officers must correctly follow standardized practices for conducting crime scene interviews and interrogations.

Learning objectives

The following table identifies the student learning objectives for this section.

After completing study of this section, the student will be able to...	Objective ID
• differentiate between an interview and interrogation	15.06.1
• differentiate between an admission and a confession	15.06.3

In this section

This section focuses on gathering evidence from individuals at a crime scene such as witnesses or the person who may have committed the crime. Refer to the table below for a specific topic.

Topic	See Page
Crime Scene Interviews	2-86
Investigative Interrogations	2-92
Section Synopsis	2-97
Learning Activities	2-107

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Crime Scene Interviews

Introduction

Statements made by victims, witnesses, or suspects at a crime scene can be critical in tying together the facts of a crime. Crime elements may be revealed by the statements of victims, witnesses, or the suspects themselves.

Definition

An **interview** is the process of gathering information from a person who has knowledge of the facts that an officer will need to conduct an investigation.

Purpose

Interviews are conducted at the scene of a crime in order to obtain and document information needed to:

- determine if a crime has taken place
- identify and locate victims and witnesses,
- identify possible suspects
- generate a crime broadcast to dispatch

Interviews vs. interrogations

It is important for officers conducting interviews at a crime scene to recognize the differences between an interview and an interrogation. The following table illustrates a number of such differences.

Interviews	Interrogations
• The process of questioning non-suspects such as victims or witnesses (who typically are willing to cooperate)	• The process of questioning *suspects* (who often may be *unwilling* to provide information to investigating officers) • Questions or conduct reasonably likely to elicit an incriminating response
• Should take place at the crime scene	• More than likely takes place as part of a follow-up investigation

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Preparation

Before beginning any crime scene interview, officers should properly prepare themselves and the individual(s) to be interviewed.

Actions	Guidelines
Be physically and mentally prepared	• Become well acquainted with the circumstances surrounding the crime • Determine the number, role, and priority of the people who should be interviewed (i.e., victim, witness, suspect, etc.) • Develop an interview plan of questions that should be asked to establish the facts of the incident (i.e., who, what, when, where, why, how) • Organize equipment that will be needed to document the interviewee's statements (e.g., notebook and pencil, tape recorder with charged batteries and blank cassettes)
Separate the involved parties	• If possible, move the person, with his or her consent, to a location where there will be no interruptions or distractions • Focus the person's attention on speaking with the officer rather than on interacting with others
Establish rapport	• Tell the interviewee why the interview is being conducted • Describe the interview process that will be followed • Assure the person that by using this process, the officer will be able to gather that person's statement accurately • Be courteous, considerate, and patient. • Control the interview by remaining calm and polite

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Listening attentively

Initially, the officer's focus should be strictly on the other person listening (not taking notes) to what that individual has to say.

Actions	Guidelines
Ask the person to recount what has happened	• Allow the person to speak freely • Have the person describe the incident just as that person understands it, using that person's own words
Keep the person focused	• If the person should begin to wander from the specific topic, guide the person back to the subject (e.g., "You mentioned that..." "Let's go back to...") • Maintain eye contact and use nonverbal gestures (e.g., nodding the head) to encourage the person
Listen carefully to what is being said	• Be particularly attentive to the essentials of the incident as described by that person including, but not limited to, the: - role of the person being interviewed (victim, witness, etc.) - type of crime, if any, that has been committed - time of the occurrence - exact location of the person during the crime or incident

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Ask questions and take notes

When the person has finished speaking initially, the interviewing officer can begin to question the individual and capture information on paper as part of that officer's field notes.

Actions	Guidelines
Obtain identification information	• Confirm the person's role in the event or incident (e.g., victim, witness, possible suspect, etc.) • Note the person's: • complete name - address and phone number (home and work) - any other information necessary for identification purposes
Ask the interviewee to repeat that person's account of what happened	• Guide the interview by asking questions that will keep the person from becoming distracted and wandering from the point • Stop the person and ask questions when necessary to clarify points • Write down information in short statements • If a statement is particularly important, have the person repeat it until it is captured entirely in field notes
Ask additional questions	• Obtain descriptions of property, suspects, etc. • Ask the individual if that person would like to add any additional information

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Recording the interview

Some officers may choose to use a small tape recorder while conducting an interview. Officers should be aware that this may inhibit the person from talking freely. Electronic equipment can also malfunction, leaving the officer with little or no information.

Even if an officer is recording the interview, that officer should also take thorough and complete notes of the interview.

Verify information

Officers should review the individual's statements with the interviewee and allow the interviewee to clarify points, if necessary.

Actions	Guidelines
Review information with the person	• Repeat specific information to verify that the information is accurate and complete • Give the person an opportunity to add facts as necessary
Ask for confirmation	• Have the person confirm important details such as: - direct quotes - time relationships - information regarding weapons - physical descriptions
Make modifications or corrections as necessary	• Information may have been initially recorded incorrectly because the officer: - misunderstood the interviewee's statement - inadvertently wrote something down incorrectly - may have incorrectly characterized the interviewee's statement
Verify changes	• Once any changes have been made, the information that has been added or modified should be verified

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Close the interview

At the end of each interview, the interviewing officers should thank the individual for that person's time and cooperation. Officers may also choose to explain any further actions that may be taken during the investigative process.

NOTE: For additional information regarding field interviews, note taking, and report writing, refer to LD 18: *Investigative Report Writing.*

Additional sources of information

During the investigation of a crime, it is imperative that the investigating officer gather as much relevant information as possible. To supplement crime scene interviews or when conducting a follow-up investigation, additional information may be obtained from:

- physical evidence
- public and private records and other documents
- informants

Investigative Interrogations

Introduction

An interrogation means any questioning or conduct that is reasonably likely to elicit (produce) an incriminating response from a suspect (i.e., perpetrator or accomplice). Although, it is possible to "interrogate" a suspect at the scene *before* the suspect has been arrested, handcuffed, or otherwise placed in "custody," interrogation more commonly takes place *after* the suspect has been taken into custody, typically as part of a follow-up investigation. When a suspect is both in "custody" and about to undergo "interrogation," then Miranda comes into play.

Continued on next page

Confession vs. admission

A peace officer who conducts an interrogation must have a clear understanding of the difference between a **confession** and an **admission**.

A(n)...	involves acknowledging...
Confession	the commission of all of the elements of a crime
Admission	certain facts that tend to incriminate the individual, but fall short of a confession

Inadmissible statements

A confession is the most compelling evidence of a suspect's guilt. However, a confession or admission that violates the person's constitutional protections and statutory requirements can be ruled inadmissible as evidence and greatly jeopardize the state's position.

The U.S. Supreme Court has upheld the inadmissibility of statements (i.e., confessions, admissions) that were obtained in violation of the following four amendments to the U.S. Constitution.

Amendment	Rights and Freedoms	A confession or admission may be *inadmissible* in a court of law if the...
Fourth	Freedom from unreasonable *searches or seizures*	arrest and statement was the result of an illegal search and seizure, such as an improper entry, unreasonable detention, etc
Fifth	Freedom from *self-incrimination*	statement was obtained during custodial interrogation carried out in violation of any Miranda requirements, such as without a complete advisement of rights, or without a valid waiver of rights

Continued on next page

Inadmissible statements (continued)

Sixth	Right to *counsel*	Statement was obtained in violation of charged defendant's right to be assisted by counsel, such as by initiating interrogation about the charged crime outside the presence of defense counsel of a defendant who has already been to court and obtained a lawyer to represent him or her
Fourteenth	Right to *due process* and *equal protection* of the law	Statement was involuntary, i.e., was coerced by the government as the result of: - physical force or threats - express or implied threats - express or implied promises of leniency - overbearing psychological pressure

Preparation

Prior to conducting an interrogation, officers should take the time to prepare themselves and form a strategy for obtaining incriminating information.

In the course of this preparation, officers should:

- read all case reports so as to be thoroughly familiar with the:
  - crime scene
  - evidence collected
  - earlier statements
- learn as much as possible about the individual to be interrogated

Continued on next page

Preparation (continued)

- decide on an interrogation technique to begin with (understanding that other techniques may be used during the interrogation as well)
- prepare a list of key questions that refer to the:
  - elements of the specific crime
  - actions taken by the individual
  - intent and motive for those actions

Location

To control all outside influences on the individual to be questioned, the interrogation should take place in a room that is:

- soundproof
- isolated from any other activity
- well lit (but not with glaring lights)
- furnished with a minimum of furniture and no distracting decorations
- secure and protected from interruptions
- connected to outside areas by a buzzer or intercom system

Obtaining a statement

The goal of an interrogation is to obtain an incriminating statement from the suspect.

When the interrogating officers detect that the suspect is ready to talk openly and honestly, the officers should continue with the technique being applied along with additional tactics to bring the interrogation to a successful conclusion.

The interrogating officers may:

- increase the intensity of the questioning
- sum up all lies or contradictions already expressed by the suspect
- move closer to the suspect to gain his or her confidence

Continued on next page

Obtaining a statement (continued)

Most importantly though, interrogating officers should never indicate in any way that their attitude has been anything but sincere, no matter which techniques have been employed.

Use of subterfuge

Subterfuge is the use of deception or falsehoods as a tactic when interrogating a suspect. In contrast, **coercion** is the use of force (mental or physical), threats, or overbearing psychological pressure to deprive a suspect's free choice to admit, deny, or refuse to answer.

The use of subterfuge by an officer during an interrogation is permissible as long it as does not cause an innocent person to confess.

Subterfuge may include:

- falsely telling a suspect that he or she have been positively identified by a witness and it does not cause a suspect to make a false confession. The use of subterfuge may play on a suspect's individual fear and sense of guilt to the point of the suspect making a willing admission or confession.

Coercion may include:

- falsely telling a suspect that members of his/her family will be held accountable if he/she does not confess to a crime.

Involuntary confessions

An **involuntary confession** or statement is one that results from the use of coercion and therefore *is not admissible in court for any purpose*. Unlike statements obtained in violation of Miranda, an involuntary confession may not be used as evidence to impeach witnesses or in any other way against the accused individual.

Section 1 Synopsis

Learning need	Peace officers must have an understanding of the amendments to the U.S. Constitution, and similar sections of the California Constitution that are related to the authority, liability, and responsibility they have in making arrests.
The Fourth Amendment and officer responsibility [15.01.2]	If peace officers are not able to show probable cause, an arrest or search may be invalid, and the resulting evidence may be excluded. During the performance of their duties, peace officers have a legal, moral and ethical responsibility to protect all of the rights afforded to a citizen by the United States and California Constitution.
The Fifth Amendment and officer responsibility [15.01.3]	Peace officers need to understand how the Miranda decision protects a person's right against self-incrimination During the performance of their duties, peace officers have a legal, moral and ethical responsibility to protect all of the rights afforded to a citizen by the United States and California Constitution.
The Sixth Amendment and officer responsibility [15.01.4]	Once this right attaches (indictment or first court appearance) and the person is represented by counsel, peace officers are prohibited from initiating interrogation of the person about the charged crime, except in the presence of counsel. During the performance of their duties, peace officers have a legal, moral and ethical responsibility to protect all of the rights afforded to a citizen by the United States and California Constitution.

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The Fourteenth Amendment and officer responsibility [15.01.5]

The Fourteenth Amendment requires that peace officers must:

- apply the law equally to all people
- treat them the same regardless of race, creed, nationality, religious preference, or national origin

During the performance of their duties, peace officers have a legal, moral and ethical responsibility to protect all of the rights afforded to a citizen by the United States and California Constitution.

Civil rights codes and officer responsibility [15.01.6]

U.S. Code, Title 42, Section 1983, states that individuals acting under color of law who deprive someone of any legal right can be held civilly liable.

U.S. Code, Title 18, Section 241, makes it a federal crime for two or more persons to conspire to injure, oppress, threaten, or intimidate someone for doing something they have a legal right to do.

U.S. Code, Title 18, Section 242, makes it a federal crime to deprive a person, under color of law, of any legal right, or to punish a person differently, based on that person's color, race, or citizenship status.

Penal Code Section 422.6(a) is broader than *U.S. Code, Title 18, Section 242*. It adds categories of religion, ancestry, national origin, disability, gender, and sexual orientation to those protected from discrimination.

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Learning need	Peace officers must recognize that a consensual encounter is a face-to-face contact with a person under circumstances which would cause a reasonable person to believe they are free to leave or otherwise not cooperate.
Appropriate applications [15.02.2]	Peace officers must be vigilant when contacting the public to ensure they do not elevate a consensual encounter into a detention.
Elevating consensual encounters [15.02.3]	Certain actions can elevate a consensual encounter.
Consequences of elevating consensual encounters [15.02.4]	Elevating a consensual encounter could have legal negative repercussions.

Continued on next page

Learning need	Peace officers must recognize that a temporary detention is an assertion of authority that is less than an arrest but more substantial than a consensual encounter.
Consensual encounter vs. detention [15.03.2]	Peace officers must be able to distinguish between a consensual encounter and a detention.
Reasonable suspicion [15.03.3]	When an officer has enough facts and circumstances are present to make it reasonable to suspect that criminal activity is occurring and the person detained is connected to that activity. Reasonable suspicion of criminal activity must exist to make a detention lawful.
Appropriate actions during a detention [15.01.4]	Peace officers can take certain investigative actions during a detention if they can be completed within a reasonably limited time.
Searches and seizures during a detention [15.03.5]	No searches are permitted during a detention unless peace officers reasonably suspect that the detained person may be carrying a concealed weapon or dangerous instrument.
Use of force or physical restraints during a detention [15.03.6]	If a person attempts to leave during a detention, the officers may use reasonable force and/or physical restraints to compel the person to remain. Uncooperative individuals may be handcuffed, and/or be placed in a patrol vehicle.

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Learning need

Peace officers must know and comply with the statutory rules of arrest in order to properly exercise their authority and responsibility while avoiding liability when making arrests.

Arrest, detention and probable cause [15.04.2, 5.04.4]

An arrest is the taking of a person into custody, in a case and in the manner authorized by law.

Probable cause to arrest is a set of facts that would cause a person of ordinary care and prudence to entertain an honest and strong belief that the person to be arrested is guilty of a crime.

A detention or stop is an assertion of authority that would cause reasonable individuals to believe they are *not free to leave*. A detention is *limited* in scope, intensity, and duration. A detention is not an arrest.

Elements of a lawful arrest [15.04.3]

Penal Code Sections 834 and *835* authorize peace officers and private persons to make arrests. The elements of an arrest are:

- The arrested person must be taken into custody, for a crime and in the manner prescribed by law.
- An arrest may be made by actual restraint of the person or by the person's submission to the officer's authority.
- Reasonable force may be used to make an arrest, prevent escape, or overcome resistance.

Information that must be given to arrested person [15.04.5]

Penal Code Section 841 requires that any person making an arrest must convey certain information to the person arrested at the time of the arrest. The three things that must be explained are, intent, cause, and authority.

Continued on next page

Section Synopsis, Continued

Warrantless arrests for misdemeanors [15.04.6]	Peace officers may make warrantless arrests for certain misdemeanors.
Warrantless arrests for felonies [15.04.7]	Peace officers may make warrantless arrests for felonies.
Warrant arrests [15.04.8]	An arrest warrant is a written order signed by a magistrate which directs and commands a peace officer to arrest the person named in the warrant for the offense named in the warrant.
Entry to make arrest [15.04.9]	*Knock and notice* means that before entering a dwelling to make an arrest, with or without a warrant, officers must give notice to the person inside. *(Penal Code Section 844)*
Private person arrests [15.04.10]	A private person may arrest an individual for any public offense that has been committed in the private persons presence.
Use of force [15.04.11]	*Penal Code Section 835(a)* authorizes peace officers to use force that is reasonable and necessary to make an arrest, prevent his escape, or overcome resistance.

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Disposition of arrested persons [15.04.12]

If the arrest is made pursuant to a warrant, the arresting officer must proceed with the arrestee as commanded in the warrant. *(Penal Code Section 848)*

Exceptions to the power of arrest [15.04.13]

There are circumstances when a person who has committed a crime and cannot be arrested.

Continued on next page

Learning need	When conducting a custodial interrogation, peace officers must follow Miranda procedures to ensure that any answers they obtain will be admissible in court.
The purpose of the Miranda warning [15.05.1]	Compliance with Miranda allows any statement the person makes to be admitted against him at trial to prove guilt without violating the person's Fifth Amendment right against self-incrimination.
When Miranda warning is required [15.05.2]	If an officer is about to *interrogate* a person who is in custody, the officer must advise the person of the four Miranda advisements.
Administering the Miranda warning [15.05.3]	Once the four Miranda advisements have been given and the person has acknowledged understanding them, the person may either waive or invoke the right to silence, the right to an attorney, or both.
Invoking Miranda rights [15.05.4]	Under Miranda, a person may invoke the right to remain silent or the right to counsel only at the time of, or during, police custodial interrogation.

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Waiving Miranda rights [15.05.5]	For any statement made after a waiver to be admissible in court, the waiver must be knowing and voluntary.
Exception to the Miranda rule [15.05.6]	A peace officer is not required to give the Miranda warning if there is imminent concern for the safety of a person or the public.

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Section 6 Synopsis, Continued

Learning need	To develop admissible evidence while ensuring the constitutional rights of all individuals, peace officers must correctly follow standardized practices for conducting crime scene interviews and interrogations.
Interviews vs. interrogations [15.06.1]	Interviewing is the process of questioning non-suspects such as victims or witnesses (who typically are willing to cooperate). Interrogation is the process of questioning suspects who often may be *unwilling* to provide information to investigating officers.
Confession vs. admission [15.06.3]	A peace officer who conducts an interrogation must have a clear understanding of the difference between a confession and an admission.

Workbook Learning Activities

Introduction

To help you review and apply the material covered in this section, 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. Match the provision to the correct Amendment of the U.S. Constitution.

_____	freedom from unreasonable searches and seizures	A. Fourth Amendment
_____	a speedy trial and assistance of counsel	B. Fifth Amendment
_____	equal treatment, regardless of race, creed, nationality, religious preference, or national origin	C. Sixth Amendment
		D. Fourteenth Amendment

2. Define a conspiracy according to *U.S. Code, Title 18, Section 241*, and give an example.

Continued on next page

Activity Questions (continued)

3. Describe the impact of the Fourth Amendment on peace officers' investigations.

Continued on next page

Activity questions (continued)

4. Describe one way peace officers can help to ensure due process rights guaranteed by the Fourteenth Amendment.

5. A peace officer is interviewing witnesses at the scene of a drive-by shooting. What actions might the officer take to make sure these encounters remain consensual and do not elevate into detentions? What should the officer do if an eyewitness says she has to leave for an appointment?

Continued on next page

Activity questions

6. What is the defining feature of a consensual encounter? Why is it important for an officer to be aware of the citizen's perspective of the encounter as well as his or her own?

7. Why must an officer guard against unintentionally elevating a consensual encounter into a detention? What actions do you think might easily cause such elevation?

Continued on next page

Activity questions

8. Give two examples describing circumstances in which an officer's questioning of a person would *not* be considered interrogation.

Continued on next page

Activity questions

9. Describe three actions a peace officer might take, aside from physically restraining a person that would define a contact as a detention.

10. Describe an instance in which a peace officer may enter a dwelling without knock and notice.

Continued on next page

Activity questions (continued)

11. A person commits a misdemeanor trespass in an officer's presence. The person flees the scene, and the officer pursues, but loses track of the person after about five blocks. After about 15 minutes, the officer stops the search and continues on patrol. Later that evening, the officer spots the person. What action should the officer take and why?

12. What is the difference between probable cause and reasonable suspicion?

Continued on next page

Activity questions

13. In connection with an arrest for robbery, at what point is an officer required to provide the Miranda warning? Describe an occurrence that might cause an exception to this requirement.

14. After being given the Miranda warning, a murder suspect invokes her right to remain silent. When, and under what circumstances, can peace officers try again to interrogate the person without violating Miranda? If the person invokes her right to an attorney after about 10 minutes of interrogation, under what circumstances can reinitiation of interrogation produce admissible evidence?

Continued on next page

Activity questions (continued)

15. Describe two situations in which a waiver of the right to remain silent under Miranda would be considered invalid.

16. What is the basis for the Miranda warning? Why do they exist?

Continued on next page

Chapter 3

Search and Seizure
Learning Domain 16

Overview

Basic Principles of Search and Seizure Law

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 section.

After completing the study of this section, the student will be able to:	Objective ID
• recognize constitutional protections guaranteed by the Fourth Amendment	16.01.2
• identify the concept of reasonable expectation of privacy	16.01.3
• recognize standing and how it applies to an expectation of privacy	16.01.4
• recognize probable cause to search and its link between Fourth Amendment protections and search and seizure law	16.01.5

Continued on next page

Overview, Continued

In this section

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	3-3
Reasonable Expectation of Privacy	3-6
Probable Cause to Search	3-12

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.

Continued on next page

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. 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.

Continued on next page

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.

Continued on next page

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. 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

Continued on next page

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

Continued on next page

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

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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"

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

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Reasonable Expectation of Privacy, Continued

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

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 or even a near 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.

Continued on next page

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, offiers must have a clear understanding of the legal requirement for warrantless searches.

Learning objectives

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

After completing the study of this section, the student will be able to:	Objective ID
• recognize the conditions and circumstances where warrantless searches and seizures are considered reasonable and legal	16.03.3
• recognize the scope and necessary conditions for conducting the following types of warrantless searches: - cursory/frisk/pat search - consent searches - searches pursuant to exigent circumstances - searches incident to arrest - probation/parole searches	 16.03.4 16.03.5 16.03.6 16.03.7 16.03.8

Continued on next page

In this section

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

Topic	See Page
Warrantless Searches in General	3-15
Cursory/Frisk/Pat Search	3-17
Consent Searches	3-22
Exigent Circumstance Searches	3-30
Searches Incident to Arrest	3-35
Probation/Parole Searches	3-39

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

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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 search and will be considered an illegal search.

Continued on next page

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	• Bulge in clothing that is the size of a potential weapon • Wearing a heavy coat when the weather is warm
Actions	• Trying to hide something • Appearing overly nervous • Acting in a threatening manner
Prior knowledge	• History of carrying weapons or violent behavior
Reason for detention	• Stopped in order to investigate a serious, violent, or armed offense
Companions	• Lawful search of companions revealed a weapon or potential weapon
Location	• 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	• Stopped during nighttime • Stopped in an area with little or no lighting
Ratio	• Detainees outnumber officers

Continued on next page

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), 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 film containers 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

Continued on next page

Reaching inside (continued)

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 which 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

Continued on next page

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 frisk/pat search him for weapons or potential weapons.

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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
- 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. Peace officers are not allowed to secure or freeze the premises in situations where they have created the exigency by their actions

Necessary conditions

For consent to be valid, the consent must be:

- *voluntary*
- 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.

Continued on next page

Consent Searches, Continued

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.

Examples

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

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.

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

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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.

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 *involuntary* if peace officers...
Show of physical force	• exhibit force while seeking consent (e.g., rest their hands on, or draw weapons).
Misrepresentation of authority	• 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	• illegally detain or arrest the subject.
Verbal coercion	• verbally demand consent rather than request it.
Intimidating demeanor	• appear in large numbers. • use a demanding tone of voice. • act in an overly authoritative manner, etc.

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Peace officer conduct (continued)

Action	Consent may be considered *involuntary* if peace officers...
Impairment or limitation of consenter	• 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.

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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: Verbal acknowledgment and approval (e.g., "Sure; go ahead") Signing a consent form	Examples: 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.

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Authority to consent

A consenter 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 consenter'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).	the item is clearly a personal effect of, or the area is under the sole authority of, the nonconsenter (e.g., personal suitcase, tool box, 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 nonconsenter (e.g., briefcase, purse, locked drawer).

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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 (i.e., person moves 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.

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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 or 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.

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Exigent Circumstance Searches, Continued

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	• there is a medical emergency where a person may be incapacitated.
Child abuse	• a child inside the premises is presently being physically abused, or • a child is in immediate need of protection.
Violent assault	• there are people inside the residence who constitute an imminent and serious threat to themselves or others.
Domestic violence	• entry is necessary to protect a victim by preventing ongoing or additional violence.

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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	• the premises are presently being burglarized.
Other emergencies	• the premises are on fire. • there are dangerous chemicals or explosives on the premises which pose a danger to people or property.

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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	• officers attempt to detain or arrest the suspect in a public place, ***but*** • the suspect flees inside a private area.
Fresh pursuit	• there is no physical chase, but • officers are quickly responding to information concerning the suspect's whereabouts, ***and*** • the officers reasonably believe the suspect's escape is imminent.

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.

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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.

Examples

Two officers were investigating a truck hijacking 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.

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.

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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*.

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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.

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Protective sweeps

A **protective sweep** is a brief search to look for individuals only.

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.

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Searches Incident to Arrest, Continued

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.

Probation/Parole Searches

Introduction

Under specific circumstances, peace officers may conduct warrantless searches of a person who is on probation or on parole. Searchable probation or parole 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.

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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
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.

Scope of the search

Parole search conditions permit a 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.

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

Continued on next page

Search of a residence

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

	Conditions
Certainty	Although absolute certainty is *not required*, the officer must possess some specific information that reasonably indicates the residence is, in fact, the probationer's/parolee'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 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/parolee'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 probationer/parolee.
Denials	If the probationer/parolee denies that they live in the residence or that personal property belongs to them (or if a joint occupant denies such), officers are *not required* to accept such denials. (A false denial might be expected when contraband is on the premises.)

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Harassment

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

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 searches

According to the California Supreme Court, notification of the individual's probation 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 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*.

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Probation/Parole Searches, Continued

Examples

Officers investigating a number of residential break-ins went to the residence of a local gang member, who was on 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.

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 section.

After completing the study of this section, the student will be able to:	Objective ID
• recognize the scope and necessary conditions for conducting the following types of motor vehicle searches:	
- probable cause searches	16.04.1
- seizures of items in plain view	16.04.2
- protective searches	16.04.3
- consent searches	16.04.4
- searches incident to custodial arrest	16.04.5
- instrumentality searches	16.04.6
• recognize the scope and necessary conditions for conducting a vehicle inventory	16.04.7

Continued on next page

In this section

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	3-47
Plain View Seizures from Vehicles	3-52
Protective Searches of Vehicles	3-54
Consent Searches of Vehicles	3-56
Searches of Vehicles Incident to Custodial Arrest	3-58
Searches of Vehicles as Instrumentalities	3-61
Vehicle Inventories	3-63

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 honestly believe they have enough information to obtain a search warrant for a vehicle from a magistrate, it is legal for them to go ahead and 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, a warrant may be necessary to search (enter) the property (garage).

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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 otherwise be lawfully accessible
- 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
- the hood
- the trunk
- any closed personal containers (including locked containers)

Continued on next page

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.

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Probable Cause Searches of Vehicles, Continued

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.

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Probable Cause Searches of Vehicles, Continued

Examples

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

Information from a reliable source, plus the officer's knowledge of a person's past criminal record, provided probable cause to search a person's recreational vehicle, parked in the public parking area of an apartment complex, for items from a 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.).

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.

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Plain View Seizures from Vehicles, Continued

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.

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.

Continued on next page

Protective Searches of Vehicles, Continued

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 have searched the trunk based on the probable cause exception to the general warrant requirement

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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 always 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*
- obtained from a person with the *authority* (or apparent authority) to give that consent

- NOTE: each officer is responsible for knowing their agency policy or 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:

- obtain a signed consent-to-search form

Continued on next page

Voluntary consent during vehicle stops (continued)

- verbally inform the individuals in authority that they have a right to refuse consent

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

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 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.

- the arrestee is unsecured (e.g. not locked in the police car, not handcuffed) and
- has reachable access to the vehicle and/or
- the officer has reasonable suspicion to believe evidence, pertaining to the crime for which the suspect was arrested, is to be found in the vehicle and/or
- the officer has reasonable suspicion there is a weapon in the vehicle

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:

- the passenger compartment of the vehicle
- everything and anything in it

Examples of such areas include, but are not limited to:

- closed or open glove compartments
- consoles
- containers within the area (e.g., luggage, boxes, bags, clothing, locked or unlocked)

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

NOTE: Containers owned by *nonarrested* occupants of the vehicle *are* also subject to a search incident to custodial arrest.

Continued on next page

Searches of Vehicles Incident to Custodial Arrest, Continued

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.

Proximity 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*

Continued on next page

Searches of Vehicles Incident to Custodial Arrest, Continued

Examples

Peace officers arrested a man at the scene of an armed robbery. They handcuffed the man, placed him in their patrol car, and then conducted a search of the man's vehicle that was parked nearby. The search was considered contemporaneous and legal even though the man did not have access to the car at the time of the arrest.

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.

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.

Continued on next page

Searches of Vehicles as Instrumentalities, Continued

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
- glove compartments
- consoles
- the trunk
- closed containers

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.

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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
- 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 other person.

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.

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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.

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Vehicle Inventories, Continued

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, 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 back pack 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.

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 section.

After completing the study of this section, the student will be able to:	Objective ID
• recognize the legal framework establishing a peace officer's authority to seize physical evidence from a subject's body: - with a warrant, and - without a warrant	 16.05.1 16.05.2
• 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
• recognize the conditions necessary for legally obtaining blood samples	16.05.5
• recognize the conditions for legally obtaining the following nonintrusive bodily evidence: - fingerprints, and - handwriting samples	 16.05.6 16.05.7

Continued on next page

In this section

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	3-70
Warrantless Bodily Intrusion Searches and Seizures	3-74
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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.

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Warrant Requirement for Bodily Intrusion Searches and Seizures, Continued

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?

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Warrant Requirement for Bodily Intrusion Searches and Seizures, Continued

Additional requirements (continued)

Factor	Consideration
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: - 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?

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Warrant Requirement for Bodily Intrusion Searches and Seizures, Continued

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 (blood, breath, or urine) without a warrant.

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.

Refusal to comply with the implied consent law may result in a fine, mandatory imprisonment if convicted, and suspension or revocation of driving privileges.

Despite the authority given by implied consent under *Vehicle Code Section 23612*; where no exigent factors exist other than the natural dissipation of blood alcohol, a warrant is still required for chemical testing (blood, breath, or urine).

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Incident to arrest

Under certain circumstances, seizing evidence from a suspect's person may be done without a warrant as 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 *must* 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.

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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 *not change* over time.	Evidence that *will change* or be lost over time.
Example: - Blood samples for routine tests, such as typing or DNA	Examples: - Blood samples to test for drugs or alcohol levels - Scrapings from under a suspect's fingernails

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Warrantless Bodily Intrusion Searches and Seizures,
Continued

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.

Blood to test for drugs or alcohol was taken from a sniper who was acting "crazy" when police caught him in the act. No warrant was required since the evidence was evanescent and was relevant to the suspect's mental state at the time of the offense.

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 only minimal force is necessary to remove an object, the warrantless search and seizure will no doubt be upheld. However, if the person refuses to open his mouth or tries to swallow the evidence, or it appears that he is about to swallow the evidence, a problem can arise.

Officers are permitted to exert minimal pressure on the neck area to prevent swallowing. However, such pressure may not prevent breathing or substantially impair the flow of blood to the person's head. In other words, no "choke holds" may be used, because they are too dangerous.

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

Continued on next page

Use of Force During Bodily Intrusion Searches and Siezures, Continued

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
- 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
- The suspect may give consent to a stomach pump or emetic but it should occur under the supervision of a doctor

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.

Continued on next page

Use of Force During Bodily Intrusion Searches and Siezures, Continued

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.

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.

Continued on next page

Specific Circumstances, Continued

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.

Section Synopsis

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.

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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.

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Section Synopsis, Continued

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.

Continued on next page

Section Synopsis, Continued

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.

Continued on next page

Section Synopsis, Continued

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.

Continued on next page

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.
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.

Continued on next page

Section Synopsis, Continued

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.

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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 section, 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. What are exigent circumstances? How do exigent circumstances justify a warrantless search?

Continued on next page

Activity questions (continued)

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

Continued on next page

Activity questions (continued)

3. 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?

Continued on next page

Activity questions (continued)

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

Continued on next page

Glossary

Introduction	**The following glossary terms apply to PC 832 Student Workbook, Volume Two: Law and Evidence**
accessory	One who knowingly assists a perpetrator after the felony has been committed
accomplice	A principal becomes an accomplice when the principal *testifies* for the prosecution against another principal
admission	Certain facts that tend to incriminate the individual, but fall short of a confession
aids and abets	Actively assisting, supporting, promoting, encouraging, strengthening, or instigating in the commission of a crime by act or advice
arrest	Taking a person into custody, in a case and in the manner authorized by law
arrest warrant	A written order signed by a magistrate, directed to and commanding a peace officer to arrest the person named in the warrant for the offense named in the warrant
breach of contract	Failure to comply with the terms of a contract
case law	Laws that are based upon appellate court decisions
cited	A person is given a written notice to appear in court; it contains the time and place where the person shall appear in court

Continued on next page

civil law	Noncriminal violations of the law
codes	All current statutes or ordinances enacted by a legislative body
coercion	The use of force, threats, or psychological pressure used to deprive a suspect of free choice or refusal to answer
confession	The commission of all the elements of a crime
consensual encounter	A face-to-face contact between a private individual and a peace officer under circumstances that would cause a reasonable person to believe that they are free to leave or otherwise not cooperate
consent search	Search conducted with consent that is *voluntary* and obtained from a person with the *authority* to give that consent
constitutional law	Rules and provisions found in the federal and state constitutions
consular officer	An official appointed by a government to reside in a foreign country to represent the *commercial interests* of citizens of the appointing country
consular service staff	The consular service staff work for the consular officer in a foreign country

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contempor-aneous	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.
crimes	Violations of a criminal statute
criminal intent	A mental state or frame of mind that the person knowingly did the particular criminal act (break the law). May be general, specific or transferred intent
criminal law	Criminal statutes that describe crime and punishment
criminal negligence	A negligent act that is aggravated or reckless, and constitutes indifference to the consequences
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
custody	A formal arrest or its "functional equivalent"
detention	An assertion of authority that would cause reasonable people to believe they are *not free to leave* or otherwise disregard the police and go about their business; a detention is *limited* in scope, intensity, and duration

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diplomatic agent	An official appointed by a government to reside in a foreign country to represent the *political interests* of citizens of the appointing country
diplomatic immunity	Those with *full* diplomatic immunity may not be prosecuted for the crimes they commit; those *without* full immunity may be arrested and prosecuted
elements of the crime	The basic facts that must be proven by the prosecution to sustain a conviction
evanescent evidence	Evidence that *will change* or be lost over time
ex post facto laws	Laws written after the fact to punish an action that has already taken place and was not illegal at the time of commission
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
felony	The most serious crime, punishable by a fine and/or imprisonment in a state prison, removal from office, or death
general intent crimes	Intent is presumed and does not have to be proven. Definition of a crime consists only of the description of a particular act, without reference to intent
immunity	Exemption from a duty or penalty
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)

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infraction	A public offense punishable by only a fine
interrogation	Direct/express questioning by a peace officer of a person about a crime, or statements or actions by an officer that are reasonably likely to elicit an incriminating response the process of gathering information from a person who has knowledge of the facts that an officer will need to conduct an investigation
interview	The process of gathering information from a person who has knowledge of the facts
invoke	To assert a right, constitutional or otherwise
involuntary confession	A statement that results from the use of coercion
judicial review	The power held by the judicial branch that permits it to review actions of the legislative and executive branches of government and declare void acts it finds are in violation of the Constitution
knock and notice	A requirement that before entering a dwelling to make an arrest, with or without a warrant, peace officers must give notice to the person inside through certain actions
letter of the law	When the law is applied in accordance with the literal meaning of the statute, leaving no room for interpretation
Miranda warning	The four advisements which an officer must give a person at the start of custodial interrogation

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misdemeanor	A crime of lesser gravity than a felony, punishable by a fine and/or imprisonment in a county jail
motor vehicle	Self-propelled vehicle (e.g., automobiles, airplanes, buses, recreational vehicles, carts, etc.)
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
ordinances	County and municipal codes or statutes
overflight	Flight of a plane or helicopter over a given area
parole	Extension of a felon'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	Can be considered to include all areas accessible to occupants within the vehicle
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)
precedent	Previous appellate court decisions that become binding on later court decisions

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pre-complaint warrant	Arrest warrant obtained before a complaint has been filed; sometimes referred to as *Ramey* warrant
principals	All persons involved in the commission of a felony or misdemeanor
probable cause	A set of facts that would cause a person of ordinary care and prudence to entertain an honest and strong suspicion that the person to be arrested is guilty of a crime
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 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 place	A public place is a location readily accessible to all those who wish to go there including law enforcement. A key consideration is whether a member of the public can access the place "without challenge." Thus, a property with a locked fence is not readily accessible. Other things, such as dogs, in a yard show public is not welcome

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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 suspicion	Enough facts and information to make it reasonable to suspect that criminal activity is occurring, and the person detained is connected to that activity; reasonable suspicion is required to justify a detention
redress	To right a wrong
search	Governmental infringement or intrusion upon an expectation of privacy that society is prepared to consider reasonable
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
specific intent crimes	An element of a crime that must be proven and cannot be presumed; the requirement of the specific intent element varies according to the definition of the crime
spirit of the law	Interpreting law in accordance with the intent of the legislative body rather than the literal meaning of the words of the statute
stable evidence	Evidence that will *not change* over time

Continued on next page

stale misdemeanor	Commission of a misdemeanor by an adult in another person's presence (including a peace officer), where the other person fails to arrest the adult within a reasonable time thereafter
standing	When a person has a legitimate possessory interest or relationship over an object or area
statute of limitation	The time limit within which suspects for most crimes must be arrested
statutory law	The written law enacted by a legislative body
subjective expectation of privacy	A person's state of mind demonstrated by affirmative action designed to protect their privacy
subterfuge	The use of deception or falsehoods as tactic when interrogating a suspect
tort	Private wrong committed by one person against another
transferred intent	When an unlawful act affects a person other than, or in addition to, the person it was intended to affect
under color of law	An action that is carried out as if under the authority of the law, but that is actually done in violation of law
valid consent	A person can give permission for search of areas/items within their control

Continued on next page

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
waive	To give up a right, constitutional or otherwise
wobbler	A crime that can be punished either as a felony or misdemeanor

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- Learning Domain 42: Cultural Diversity/Discrimination
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Law and Evidence

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