



STATE OF NEVADA
COMMISSION ON PEACE OFFICER STANDARDS AND TRAINING
Performance Objective Reference Material

The Performance Objective Reference Material is designed to accompany the P.O.S.T. mandated Performance Objectives of each N.A.C. mandated course for Category I, II, III, and Reserve peace officers.

Thoroughly reviewing this document will help in your preparation to teach the related course.

An instructor will not be successful by reviewing the Performance Objective Material the night before or the day of instruction. Instructors are expected to spend time studying this reference material, researching supplemental material, and developing student activities which will in effect enhance the learning for students. DO NOT be an instructor who shows up unprepared and expects a "canned" presentation to be given based on this reference material.

The Performance Objective Reference Material is to be used for the purpose of understanding the Course Performance Objectives and to be used as a guide for lesson plan development.

P.O.S.T. would like to thank you for being a part of the training of new Peace Officers in the State of Nevada.

**Significant changes or notable sections are outlined in red.
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Title: Search and Seizure
Category: I, II, III, Reserve
NAC: 289.140, 150, 160, 170

Constitutional Protections of the Fourth Amendment (POA)

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

- Privacy
- Liberty
- Possession of property

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.

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.

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.

Definitions

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.



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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 or
- a person voluntarily submits to a peace officer's authority

Reasonable Expectation of Privacy (PO B)

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

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

Definitions

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.

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.



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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
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	Lower



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		the view into the area beyond the fence.	
Garbage	A garbage can is stored next to a side door to their house.	The residence.	Higher
	A homeowner's garbage is bagged and placed at curbside.	The trash is outside the curtilage of the residence within access to the general public.	Lower

Open field 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

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 (PO B1)

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:



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- ownership
- lawful possession
- authority
- control of the area searched or the property seized

Examples

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

A male defendant contests the search of his 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 and Search and Seizure (PO C)

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...

There is no difference in the definition and application of probable cause whether in justification for a search or justification for an arrest (seizure). Probable cause to search differs in content, but not in degree of certainty, from probable cause to arrest.

Search	Arrest
Peace officers must articulate probable cause that: a crime has been committed, and evidence concerning the crime or the identity of the perpetrator is located at the place to be searched.	Peace officers must articulate probable cause that: a crime has been committed, and the individual to be arrested committed that crime.



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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 (PO C1)

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

The Fourth Amendment, in general, requires a warrant supported by probable cause in order to search. However, the courts have carved out some exceptions to the requirement of a search warrant. But, whether it is in support of a search warrant or in support of a warrantless arrest, probable cause is required.

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.

Exclusionary Rule (PO D)

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

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

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



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Search Warrant Service (PO E)

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

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

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

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

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

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

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

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

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

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

To establish probable cause to search, there must be a fair probability that...	Rationale	Examples
a crime occurred.	There must be at least a fair probability that a crime has occurred or, in some cases, will occur.	Person sold drugs to an undercover officer or a person purchased a large amount of



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		chemicals that could be used for a clandestine lab.
evidence pertaining to the crime exists, and	Officers must establish that evidence of a crime exists. This can be accomplished by direct evidence, circumstantial evidence, or by reasonable inference.	Information from a victim that a gun was displayed during a robbery. Stolen property. Existence of items commonly used to commit or facilitate a crime (e.g., drug paraphernalia).
the evidence is located at the place to be searched.	Officers must establish that the evidence was taken to, or produced at, the place to be searched. This can be accomplished by direct evidence, circumstantial evidence, or by reasonable inference.	A reliable source saw the evidence at the location. The person goes directly to a location after a crime has been committed. The location is one where a criminal might likely hide incriminating evidence.

Definitions

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

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

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

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



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

Securing Pending Issuance of Search Warrant (PO E1)

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

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

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

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

Examples:

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

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

Detaining Subjects Pending Issuance of Search Warrant

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



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

Time Limitation on execution of Warrant (PO# E2)

The warrant may be executed and returned only within 10 days after its date. NRS 179.075

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

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

- obtain a new warrant
- resubmit the expired warrant so it may be reissued and revalidated
- **Exceptions, collection of a biological specimen from a person, may be executed and returned within 6 months after its date. (for warrants issued on, or after, October 1, 2019)**

The return of the warrant means returning the warrant and a written inventory of the property taken to the magistrate.

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

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

The warrant must direct that it be served between the hours of 7 a.m. and 7 p.m., unless the magistrate, upon a showing of good cause therefor, inserts a direction that it be served at any time.

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

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

- nighttime service will decrease danger to the peace officers



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- a drug sale occurred at the search location at night
- prompt execution might preclude murders
- the property sought will likely be gone, sold, or removed by dawn
- the stolen items are primarily perishable or easily disposable goods

As long as the search begins before 7:00 p.m., no nighttime authorization is necessary, even though the search may continue on well beyond that hour.

Knock and Notice Requirements (PO E3)

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

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

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

- knock or otherwise announce their presence
- identify themselves as peace officers
- state their purpose
- demand entry
- wait a reasonable amount of time
- if necessary, forcibly enter the premises

Wait/refusal requirement

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

Refusal may be based on:

- a verbal statement
- individual conduct
- the passage of a reasonable amount of time

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



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Inner Doors

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

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

Forcible entry

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

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

Exceptions to the knock and notice requirements

The U.S. Supreme Court has determined that a magistrate “pre authorizing” the officers to forgo the knock and notice requirement is unreasonable. A magistrate may not endorse a “no knock” provision within the search warrant.

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

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

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

Examples

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

Officers were sent to an apartment with a warrant to search for illegal weapons. The resident of the apartment had been arrested in the past by the same officers for armed



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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.

Execution of the Search Warrant

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

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

Presenting the warrant upon entry

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

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

Scope of the search

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

Search warrants must include specific:

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

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

Detaining Persons on the Premises

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

- is already inside the premises



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- has a key to enter the premises freely
- enters the premises without knocking

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

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

Containers

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

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

Examples

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

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

Nexus Rule

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

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

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

Examples

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



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

Plain View Seizures Do not Constitute a Search (PO F)

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

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

Requirements (PO F1)

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

Peace officers must have:

- probable cause
- a lawful right to be in the location
- lawful access to the item

Probable Cause for seizure

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

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

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

Observation from a lawful location



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

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

Examples

Stereo speakers, matching the description of a stolen item, were left on the back seat of a vehicle that was parked in a lot open to general pedestrian traffic. The officer's observations were made from the public access area around the car.

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

Surveillance

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

Sensory aids

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

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



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Abandoned property

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

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

Lawful access

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

Lawful access to private property is most commonly obtained when:

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

Examples

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

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

Warrantless Searches in General (PO G)



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Introduction

Under the Fourth Amendment, warrantless searches of private property are presumptively illegal.

However, case law has created some exceptions to the warrant requirement. Warrantless searches will be upheld if the peace officer's conduct came within one of these exceptions.

Fourth Amendment protection

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

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

Case law exceptions

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

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

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

- cursory/frisk/pat down
- consent searches
- searches pursuant to exigent circumstances
- searches incident to custodial arrest
- probation/parole searches

Establishing the basis for a warrantless search or seizure (PO G1)

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 (PO G2i)



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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.

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.



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Factor	Examples
Clothing	Bulge in clothing that is the size of a potential weapon Wearing a heavy coat when the weather is warm
Action	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/Darkness	Stopped during nighttime Stopped in an area with little or no lighting
Ratio	Detainees outnumber officers

Contraband

If, during a lawful cursory/frisk/pat search for weapons, an item is discovered that is immediately recognized as contraband (based on plain sight, smell, or touch), 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.



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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

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



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- if they accept the ride, they must first consent to a cursory/frisk/pat search

Synopsis

Rules related to cursory/frisk/pat downs is derived directly from the *Terry v Ohio* Supreme Court case as codified under NRS 171.123. Detention criteria and reasonable suspicion is also covered under the state required topic "Probable Cause". Students should recall that detentions and cursory/frisk/pat downs require separate articulable facts to justify each. You must have reasonable articulable suspicion that criminal activity is afoot and the person to be detained is somehow connected to the criminal activity to lawfully detain someone. In addition you must have reasonable articulate facts to suspect the person lawfully detained is armed to conduct a cursory/frisk/pat down. Nevada adds the additional time constraint of 60 minutes to either confirm or deny your suspicions. If you cannot, the subject must be released.

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.

Consent Searches (PO G2ii)

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



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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, and
- obtained from a person with apparent authority to give that consent

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

NOTE: An unlawful detention invalidates a consent search.

Scope of a consent search

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

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

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

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



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

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 <i>involuntary</i> if peace officer...
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.
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.



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	<p>Mentally incapable of giving permission.</p> <p>Overly distraught or too emotional to understand.</p>
--	--

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.
<p>Examples:</p> <p>Verbal acknowledgment and approval (e.g., "Sure; go ahead")</p> <p>Signing a consent form</p>	<p>Examples:</p> <p>Nodding approval</p> <p>Stepping aside to allow entry</p>

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.

NOTE: There is no legal mandate (Constitutionally or otherwise) requiring a written consent. However, some jurisdictions prefer a written consent as the "voluntariness" is easier to prove. Officer should become familiar with policy and preferences within their jurisdictions.

Right to refuse



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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.

Searches Pursuant to Exigent Circumstances (PO G2iii)

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.

Scope of a search

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

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

Exception to knock and notice

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

Imminent danger to life



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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.

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, or there are dangerous chemicals or explosives on the premises which pose a danger to people or property.

Imminent escape



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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.

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



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view. The entry was legal because the officer was attempting to prevent damage or further damage to the property.

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

Searches Incident to Arrest (PO G2iv)

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.



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

Contemporaneous search

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

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

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

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

"Arm's reach" rule

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

- grab a weapon
- obtain any item that could be used as a weapon
- destroy evidence

NOTE: The fact that the arrestee has been handcuffed or otherwise immobilized does not eliminate or change the "arm's reach" rule.

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

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:



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- 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.

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 (PO G2v)

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).



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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.

Who/when may they be searched?

In Nevada;

- For probationers, valid search clause must exist – generally names what can be searched for
- For parolees – any parole violation Probation officer/Parole Officer (P.O.) must have reasonable suspicion
- May be done by another agency if authorized by P.O. and related to supervision
- P.O. may not search for police to evade 4th amendment, but may always search if reasonable suspicion exist that a violation has occurred

Note: Every parole or probation release includes a clause prohibiting criminal activity. To do so would be a probation/parole violation. In terms of understanding, the P.O. will search to insure compliance with the release clause, which is of course determining whether or not a crime had occurred.

The officer must have specific authority granted by the supervising P.O. or have the supervising P.O. present.

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.



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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. Understand NV requires supervising P.O. authorization
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.)

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



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- demonstrate arbitrary or oppressive peace officer conduct
- are undertaken with personal animosity toward the probationer/parolee

Note: The U.S. Supreme Court has stated that a person may waive their Fourth Amendment rights allowing *any peace officer* to search their home or person at any time day or night, with or without probable cause and this waiver is valid. The courts have said as long as that search is not *arbitrary and capricious* and the purpose of the search is to insure compliance with probation or parole clauses, the waiver and subsequent search is valid. *That* said Nevada limits that waiver and allows only parole/probation officers to authorize such a search.

Probable Cause Search (PO H1)

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.

Note: Nevada only recently adopted the federal rule in terms of searching vehicles without a warrant (based on probable cause). The case (State v. Lloyd-312 P.3d 467) voided prior Nevada Supreme Court cases that either required a search warrant or allowed the vehicle exception where there was both probable cause and exigency. State v. Lloyd (2013) established that Nevada officers may search a vehicle with probable cause (no additional requirements). As this is a rather new concept in Nevada, students are encouraged to understand what the district attorney's office in their jurisdictions may require.

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)

Vehicles

NRS 482.075 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.



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

Motor homes

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

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

Probable cause

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

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

Time of search

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

Note: Again this is a relatively new concept in Nevada. The probable cause does not have to be related to the reason for the initial stop or when the search takes place.

Closed containers

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

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

Examples

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



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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- vehicles (PO# H2)

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.



Examples

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.

A peace officer made a traffic stop and observed, from outside the vehicle, items which she recognized as methamphetamine smoking devices on the floorboards. The plain view observation permitted the officer to enter the passenger compartment and seize the evidence, and provided probable cause to search for more.

Protective Searches of Vehicles (PO H3)

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



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

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

Plain view

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

Containers

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

Examples:

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

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

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

Consent Searches of Vehicles (PO H4)

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.



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Necessary conditions

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

Consent must be:

- voluntary, and
- obtained from a person with the authority (or apparent authority) to give that consent

NOTE: 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.

In some instances, it may be easier to prove the voluntariness of the consent if it is obtained after the purpose of the stop has been concluded (and they are free to leave).

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



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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 (PO H5)

Introduction

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

Necessary conditions

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

- the 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 of 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 a vehicle incident to a recent occupant's arrest only if it is reasonable to believe that the arrestee might access the vehicle at the time of the search or that the vehicle contains evidence of the offense of arrest"

Or

The arrestee is un-secure and still has access (arms reach) to the vehicle.

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



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Custodial arrest

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

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

Establishing a nexus to the vehicle

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

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

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

Contemporaneous nature of the search

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

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

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

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

Examples

Peace officers arrested a man next to his car at the scene of a petty theft. They conducted a search of the man's vehicle as he stood nearby. The search was considered



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contemporaneous and legal because the man had access to the car at the time of the search.

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

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

Searches of Vehicles as Instrumentalities (PO H6)

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



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

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

Examples:

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

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

Vehicle Inventories (PO I)

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



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Purpose of an inventory

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

The purpose of a vehicle inventory is to protect:

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

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

Lawful custody

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

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

- the driver (sole occupant) is taken into custody
- the vehicle, involved in a traffic accident, cannot be driven
- the vehicle must be moved to protect it or its contents from theft or damage
- circumstances which require removal (e.g., vehicle as a traffic hazard, stolen vehicle, etc.)

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.

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.



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Searches and Seizures from the Body by Warrant (PO J1)

Introduction

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

Fourth Amendment protection

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

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

Fifth Amendment protection

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

Express wording

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

Probable cause plus

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

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



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Additional requirements

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

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

Examples

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

NOTE: When a warrant is sought to obtain a blood sample, the "probable cause plus" requirement is almost non-existent, since taking blood involves such a minimal intrusion and is so routine in our society. Accordingly, the warrant will be sufficient if it shows (1)



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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.

Without a Warrant (PO J2)

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 Nevada has given implied consent for chemical testing (blood, breath, or urine) without a warrant.

Note: Recent Supreme Court decisions seem to indicate that refusals to allow a blood cannot be criminalized. However, action taken on a person's driver's license (suspension or revocation) is administrative and not criminal.

Note: Recent U.S. Supreme Court decisions would indicate a warrant is necessary to force a blood draw for DUI. The Nevada Supreme Court previously determined that a warrant is necessary for a DUI forced blood draw (or non-consensual).

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. (Note: see above for information regarding blood draws and DUI).

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.



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Probable cause to search.	The officer must reasonably believe that the search will result in the discovery of evidence of a crime.
Exigent circumstances.	It must be reasonable to believe that evidence will be lost or destroyed if the officer waits to obtain a warrant.
A need that outweighs the intrusiveness.	The need for the evidence must outweigh the intrusive nature of the search and any foreseeable danger.

Exigent circumstances

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

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

Stable Evidence	Evanescent Evidence
Evidence that will not change over time.	Evidence that will change or be lost over time.
<p style="text-align: center;">Example:</p> <p>- Blood samples for routine tests, such as typing or DNA</p>	<p style="text-align: center;">Example:</p> <p>Scrapings from under a suspect’s fingernails</p>

Example

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.



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Use of Force during Bodily Intrusion Search and Seizure

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 (PO K)

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.

Swallowed evidence

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

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



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

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

Documentation

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

Examples

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

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

Special 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 (PO L)

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



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- 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.

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.

Fingerprints (PO M1)

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 (PO M2)

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 cannot 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.

Identification Procedures (PO N)

Introduction



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

Purpose

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

Undue suggestively

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

Indeed, peace officers must be very careful to avoid any conduct before, during, and after the identification process which might be ruled suggestive.

General identification procedures

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

Peace officers should ALWAYS...	Peace officers should NEVER...
Obtain as detailed and complete a description of the suspect as possible from the victim or witness before any identification process.	Make suggestions, lead, or prompt victims or witnesses to give a description they do not mean to give.
<p>tell the victims or witnesses that:</p> <ul style="list-style-type: none">- they should keep an open mind,- The person who committed the crime may or may not be among those present.	<p>tell the witness or victim that:</p> <ul style="list-style-type: none">- the person who committed the crime has been caught,- the victim’s property or other evidence was found in the suspect’s possession, or- The suspect has made incriminating statements.



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Maintain an appearance of neutrality before, during, and after the actual viewing.	Say anything about a suspect to the victim or witness before, during, or after the actual viewing.
--	--

Absolute certainty

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

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

Documentation

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

- a verbatim account of what the victim or witness said
- a description of the victim's or witness' response to viewing the suspect

Field Show ups

Introduction

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

Timing

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

The advantages of this short time lapse include:

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

Location



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

There are three exceptions to this general rule.

- The subject clearly and voluntarily consents to being moved
- Independent probable cause exists to arrest the subject and take the subject into custody

It is very impractical to transport a witness to a possible suspect because:

- the victim or witness is too injured to be moved
- the availability of transporting officers is limited, and the wait would create a greater intrusion on the subject's freedom than transporting the subject

Legal representation

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

Searches

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

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

Implications of custody

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

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

Examples

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



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the identity of the suspect. Under these conditions, the identification procedure was upheld.

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