

SAN BERNARDINO COUNTY SHERIFF

Search and Seizure: Advanced, POST CC# 2330-22268

**Course Purpose:** *The purpose of this course is to provide officers with the current state of the law related to Search and Seizure concepts for law enforcement officers beyond what is taught in the Basic Academy.*

**Learning Outcomes:** *Officers will gain an understanding in historical and current concepts related to search and seizure, detentions, warrant exceptions and service, mobile vehicle stops and searches, and technology / phone searches. Students will be able to clarify and advance their understanding of lawful searches and seizures.*

## Search & Seizure General Outline

### I. SEARCH & SEIZURE BASICS

#### a. Authority

- i. Fourth Amendment
- ii. California Constitution, Article I, section 13
- iii. Supremacy Clause, US Constitution

#### b. Warrant Basics

#### c. Consensual Encounters

- i. Government Code section 12525.5 requirements
- ii. Definition: Approach in a public place to engage in uncoerced conversation. Florida v. Royer (1983) 460 U.S. 491; In re Manual G. (1997) 16 Cal.4th 805; Wilson v. Superior Court (1983) 34 Cal.3d 777.
- iii. Consensual encounter v. detention. People v. Linn (2015) 241 Cal.App.4th 46.
- iv. Caselaw Examples of Consensual Encounter vs. a detention:
  - 1. Searches, frisks, or detentions not allowed
  - 2. Unintended detentions
  - 3. Obtaining personal identification of the subject
  - 4. Mere questioning by police usually not a detention
  - 5. Walking or driving next to subject
  - 6. Asking vehicle passenger to step out of car
  - 7. Asking person to remove hands or contents from pockets
  - 8. Flashlighting or spotlighting

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9. Transportation of subject
10. Displaying of badge or other police identification
11. Contacts on a bus
12. Contacts at a person's home
13. Subject's flight from a consensual encounter; chasing subject
14. Photographing or videoing subjects

d. Detentions & Searches

i. No warrant needed for temporary detention when reasonable suspicion subject involved in criminal activity. *Terry v. Ohio* (1968) 392 U.S. 1.

1. Reasonable Suspicion
2. Articulate facts of criminality. *People v. Souza* (1994) 9 Cal.4th 224.
3. Totality of the circumstances. *People v. Suff* (2014) 58 Cal.4th 1013.
4. Seizure
5. Search (patdown)
6. Officer Safety
7. Detaining without reasonable suspicion

ii. Detentions v. Arrests

1. General Rule: If not handled properly, a "detention" could become a de facto arrest, which if not supported by probable cause, is illegal. *Orozco v. Texas* (1969) 394 U.S. 324; *In re Antonio B.* (2008) 166 Cal.App.4th 435.

2. Factors in determining Arrest & Examples:

- a. Use of firearms
- b. Use of handcuffs
- c. Locked police car
- d. Show of force
- e. Physicality

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- f. Transporting detainee
- g. Emergency lights or sirens
- h. Exceptions

e. The Exclusionary Rule & How it Works

- i. Overview of the Exclusionary Rule. *Weeks v. United States* (1914) 232 U.S. 383.
- ii. Purpose of the Exclusionary Rule. *U.S. v. Calandra* (1974) 414 U.S. 338.
- iii. Reasonableness Test. *Brigham City v. Stewart* (2006) 547 U.S. 398, 403.
- iv. Applicable to Government Entities. *Krauss v. Superior Court* (1971) 5 Cal.3d 418.
- v. Good Faith Exceptions. *Davis v. U.S.* (2011) 564 U.S. 229.
- vi. Fruit of the Poisonous Tree Doctrine. *Segura v. U.S.* (1984) 468 U.S. 796; *Wong Sun v. U.S.* (1963) 371 U.S. 471.
  - 1. Factors: 4th Amendment violation led to collection of evidence.
  - 2. The presence of intervening circumstances which led to the evidence
  - 3. Flagrancy of misconduct. *People v. Rodriguez* (2006) 143 Cal.App.4th 1137.
  - 4. Exceptions
    - a. Identity of defendant. *INS v. Lopez-Mendoza* (1984) 468 U.S. 1032.
    - b. Identity of witness. *People v. Boyer* (2006) 38 Cal.4th 412.
    - c. Searches by foreign entities. *U.S. v. Valdivia* (2012) 680 F.3d 33.
    - d. Leads to Impeachment Evidence. *Walder v. U.S.* (1954) 347 U.S. 62.
    - e. New Crimes Committed as a Result. *In re Richard G.* (2009) 173 Cal.App.4th 1252.
    - f. Searches Based on Existing Law. *Davis v. US* (2011) 564 U.S. 229.
    - g. Minimal Intrusion Doctrine (limited usage). *People v. Robinson* (2012) 208 Cal.App.4th 232.
    - h. Admin Proceedings. *People v. Mason* (2016) 8 Cal.App.5th Supp. 11.

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i. Defendant's Expectation of Privacy. *Bond v. U.S.* (2000) 529 U.S. 334; *People v. Robles* (2000) 23 Cal.4th 789.

f. Harvey Madden Doctrine/Official Channels: *People v. Harvey* (1958) 156 Cal.App.2d 516; *People v. Madden* (1970) 2 Cal.3d 1017.

g. Standards of Proof

i. "Reasonable Suspicion" of Criminal Activity. *Terry v. Ohio* (1968) 392 U.S. 1.

ii. Preponderance of evidence. *Lillian F. v. Superior Court* (1984) 160 Cal.App.3d 314.

iii. Probable Cause. *In re Azzarella* (1989) 207 Cal.App.3d 1240.

iv. Clear and Convincing Evidence. *People v. Mary H.* (2016) 5 Cal.App.5th 246.

v. Proof Beyond Reasonable Doubt. *Ibid.*

## II. WARRANT EXCEPTIONS

a. Consent

i. Prior Consent Searches

1. Probation, Parole, & PRCS searches. *People v. Bravo* (1987) 43 Cal.3d 600; *In re Tyrell* (1994) 8 Cal.4th 68. Pen. Code section 3067.

a. Requirements

b. Probation/Parole Search of Home. *People v. Downey* (2011) 198 Cal.App.4th 652.

c. Probation/Parole Search of Automobile. *People v. Schmitz* (2012) 55 Cal.4th 909.

d. Special Rules on Cell Phones & Electronic Devices. PC 1546.1

2. Blood Draws & DUI Stops. VC § 23612

ii. Consent Searches

1. Free and Voluntary Consent is an exception to warrant requirement. *U.S. v. Matlock* (1974) 415 U.S. 164.

a. Factors & Scenarios: *People v. Ramirez* (1997) 59 Cal.App.4th 1548.

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- i. Under Arrest
- ii. Threatening to Obtain Warrant
- iii. Threatening to Use K9 Dog
- iv. Threatening Search the Home of Someone Else
- v. Threatening Suspension of License
- vi. Using a Ruse
- vii. Threats to take away children
- viii. During a consensual encounter
- ix. Other scenarios
- x. Failure to object
- xi. Result of Illegal police action

b. Consent During Prolonged Detention. *People v. McGaughran* (1979) 25 Cal.3d 577.

c. Scope of Consent. *Florida v. Jimeno* (1991) 500 U.S. 248

d. Express or Implied Consent. *People v. Panah* (2005) 35 Cal.4th 395.

e. Withdraw of Consent. *People v. Martinez* (1968) 259 Cal.App.3d Supp. 943.

f. Other issues in obtaining consent.

2. Third Party Consent to Search. *Illinois v. Rodriguez* (1990) 497 U.S. 177.

a. Actual Authority

b. Apparent Authority

c. Landlords. *Chapman v. U.S.* (1961) 365 U.S. 610

d. Parents. *In re Scott* (1979) 24 Cal.3d 395.

e. Co-Tenants. *Beach v. Sup.Court* (1970) 11 Cal.App.3d 1032; et. al

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b. Exigent Circumstances

i. Definitions: emergency situation requiring swift actions to protect life, liberty, or property, detain a suspect, or prevent them from escaping. *U.S. v. Ventresca (1965) 380 U.S. 102.*

ii. Examples:

1. Prevent destruction of evidence
2. Officer safety
3. Fresh or hot pursuit of a suspect
4. Searching for additional suspects
5. Protection of life or property
6. Prevent escape
7. Child Custody issues

c. Special Needs or Community Caretaking Functions

i. Conducted for non-law enforcement purposes

ii. Balances the need to search vs. the constitutional intrusions. *Henderson v. City of Simi Valley (9th Cir. 2002) 305 F.3d 1052.*

iii. Examples (too numerous to list).

d. Plain View Doctrine

i. Plain Sight Doctrine. *People v. Block (1971) 6 Cal.3d 239, 243.*

1. No Search if from lawful vantage point
2. Justification for Seizure
3. Expectation of privacy

ii. Plain Hearing Doctrine. *People v. Bradley (1957) 152 Cal.App.3d 527.*

iii. Plain Smell Doctrine. *People v. Bock Leung Chew (1956) 142 Cal.App.2d 400.*

iv. Plain Feel Doctrine. *People v. Lee (1987) 194 Cal.App.3d 975.*

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**III. SEARCHES OF PERSONS**

- a. Privacy Rights. *Winston v. Lee* (1985) 470 U.S. 753.
- b. Searches Incident Arrest. *Chimel v. California* (1969) 395 U.S. 752; *New York v. Belton* (1981) 453 U.S. 454.
  - i. Justification. *U.S. v. Ventresca* (1965) 380 U.S. 102.
  - ii. Element of Transportation. *U.S. v. Robinson* (1973) 414 U.S. 218.
  - iii. Time & Place: *People v. Ingham* (1992) 5 Cal.App.4th 326.
  - iv. Exceptions: Cell phones, Blood samples in DUI cases, Body Cavity Searches, etc.
- c. Searches Based on Probable Cause: *Coleman* (1991) 229 Cal.App.3d 321.
  - i. PC § 833.5
  - ii. Examples
- d. Detention: Frisk or Search
  - i. Patdowns defined. *Terry v. Ohio* (1968) 392 U.S. 1.
  - ii. Procedures
  - iii. Constitutionality & lawfulness. *Arizona v. Johnson* (2009) 555 U.S. 323.
  - iv. Articulable facts. *Thomas v. Dillard* (9th Cir. 2016) 818 F.3d 864.
  - v. Limited to Outer Clothing & Exceptions. *People vs. Brisendine* (1975) 13 Cal.3d 528.
  - vi. For weapons only. *Santos v. Superior Court* (1984) 154 Cal.App.3d 1178.
    - 1. Plain Feel Doctrine.
  - vii. Reasonable Suspicion
    - 1. Factors in Reasonable Suspicion. (et. al).
    - 2. Nature of the Crime as a Factor. *Osborne* (2009) 175 Cal.App.4th 1052.
  - viii. Consensual patdowns. *U.S. v. Russell* (9th Cir. 2012) 664 F.3d 1279.
  - ix. Other Situations to be aware of in frisk
    - 1. Rises to detention during consensual encounter

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2. Execution of a search warrant or waiver search
3. When based on anonymous tips. Florida v. J.L. (2000) 529 U.S. 266
4. Feeling a controlled substance. People v. Lee (1987) 194 Cal.App.3d 975.
5. Abandoned property
6. Fingerprint evidence
7. Searching for identification
8. Obtaining DNA or blood sample
9. Jail or Post-booking searches

**IV. VEHICLE SEARCHES**

1. Basis for the Traffic Stop

a. Legal Basis Examples: See e.g. People v. Castellon (1999) 76 Cal.App.4th 1368, 1373; Kodani v. Snyder (1999) 75 Cal.App.4th 471, 476-477; People v. Bell (1996) 43 Cal.App.4th 754, 760-761; People v. Uribe (1993) 12 Cal.App.4th 1432, 1436; Byrd v. Superior Court (1968) 268 Cal.App.2d 495, 496; People v. Bracken (2000) 83 Cal.App.4th Supp. 1; Mary M. v. City of Los Angeles (1991) 54 Cal.3d 202, 219.

- i. No law enforcement involvement
- ii. Moving violations
- iii. Estimates of speed
- iv. Lying to suspect as reason for stop
- v. Avoiding checkpoints
- vi. Vehicle Code violations
- vii. Windshield obstruction
- viii. Weaving in lane
- ix. Community caretaking functions
- x. Parking tickets



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- xi. Gang-related activity
- xii. Checking vehicle for wanted suspect
- xiii. Mistake of law v. Mistake of fact
- xiv. Pretext stops
- xv. Incident arrest
- xvi. Probable cause
- xvii. When vehicle itself is evidence of crime
- xviii. Statutory inspections and searches
- xix. Searching for registration or related vehicle information
- b. Standard of Proof

2. Search & Detention of Vehicle Driver

- a. Arrest of driver. Probable Cause Standards
- b. Detention of Driver. See search of Persons section
- c. Ordering out of vehicle. *Pennsylvania v. Mimms (1977) 434 U.S. 106.*
- d. Ordering inside of vehicle.
- e. Demanding identification from driver. *People v. Lopez (1989) 212 Cal.App.3d 289.*
- f. Flight from scene. *People v. Souza (1994) 9 Cal.4th 224*

3. Search & Detention of Vehicle Passengers

- a. Arrest of passengers. Probable Cause standards
- b. Detention of passengers. *Brendlin v. CA (2007) 51 US 249.*
- c. Ordering out of the vehicle. *Maryland v. Wilson (1997) 519 US 408.*
- d. Ordering inside the vehicle. *US v. Williams (9th Cir. 2005) 419 F.3d 1029.*
- e. Demanding identification. *People v. Vibanco (2007) 151 Cal.App.4<sup>th</sup> 1.*
- f. Flight from scene. *People v. Souza (1994) 9 Cal.4th 224*

4. Search of Vehicle & Scope of Each

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- a. Warrant is not required to search a vehicle if probable cause exists. *Carroll v. US* (1925) 267 U.S. 132. There are lesser privacy concerns on a highway.
- b. Search Incident Arrest. *New York v. Belton* (1981) 453 U.S. 454; *United States v. Robinson* (1973) 414 U.S. 218; *Arizona v. Gant* (2009) 55 U.S. 332; *Chimel v. California* (1969) 395 U.S. 752.
- c. Inventory Searches & Impounding Vehicle. *Florida v. Wells* (1990) 495 U.S. 1; *Colorado v. Bertine* (1987) 497 U.S. 367

5. Containers in Vehicle

- a. Rule. Search of vehicle include searching items within the vehicle, including containers. *Wyoming v. Houghton* (1999) 626 U.S. 295; *People v. Mitchell* (1995) 36 Cal.App.4<sup>th</sup> 672.
- b. Exceptions (cellphones). *Riley v. California* (2014) 573 U.S. \_\_\_\_ (134 S. Ct. 2473).

**V. SEARCHES OF HOMES AND OTHER BUILDINGS**

- 1. Private Residences & Expectation of Privacy. *Payton v. New York* (1980) 445 U.S. 573; *People v. Ramey* (1976) 16 Cal.3d 263.
- 2. How to classify other buildings or areas
  - a. Commercial business. *Marshall v. Barlow's Inc.* (1978) 436 U.S. 307; *Patel v. City of Montclair* (9th Cir. 2015) 798 F.3d 895.
  - b. Hotel & Motels. *Stoner v. California* (1964) 376 U.S. 483.
  - c. Boarding homes. *United States v. McDonald* (1948) 335 U.S. 451.
  - d. Garage. *U.S. v. Oaxaca* (9th Cir. 2000) 233 F.3d 1154.
  - e. Hospital. *People v. Fond* (1999) 71 Cal.App.4th 127.
  - f. Jail cell. *People v. McDade* (1991) 71 Cal.App.4th 127.
  - g. Recreational vehicles. See generally *People v. Trevino* (2016) 1 Cal.App.5th 120 (First degree burglary case substantiated recreational vehicle as inhabited dwelling).
  - h. Curtilage of the home. *Oliver v. U.S.* (1984) 466 U.S. 170; *U.S. v. Dunn* (1987) 480 U.S. 294.

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- i. Open Fields. *Hester v. U.S.* (1924) 265 U.S. 57; *California v. Ciraolo* (1986) 476 U.S. 207.
  - j. Temporary homes. *U.S. v. Gooch* (9th Cir. 1993) 6 F.3d 673.
  - k. Workplace of government employees. *O'Connor v. Ortega* (1987) 480 U.S. 709
  - l. Public restrooms & dressing rooms. *Britt v. Superior Court* (1962) 58 Cal.2d 469. Etc.
3. Parameters of conducting a search of a home.
- a. General parameters. *People v. Superior Court (Irwin)* (1973) 33 Cal.App.3d 475.
  - b. Exigency situations. *People v. Shuey* (1973) 13 Cal.App.3d 835.
  - c. Securing Residence. *U.S. v. Alaimalo* (9th Cir. 2002) 313 F.3d 1013.
  - d. "Detention" of Residence. *Illinois v. McArthur* (2001) 531 U.S. 326.
  - e. Detention of the Residents Outside. *Ibid.*
  - f. Knock and Talk. *United States v. Cormier* (9th Cir. 2000) 220 F.3d 1103.
  - g. Consent Once Removed. *United States v. Bramble* (9th Cir. 1966) 103 F.3d 1475.
  - h. Observation From Outside Residence. *Horton v. California* (1990) 496 U.S. 128.
  - i. Use of Ruse to Enter. *People v. Reeves* (1964) 61 Cal.2d 268; *Mann v. Superior Court* (1970) 3 Cal.3d 1; *Kentucky v. King* (2011) 563 U.S. 452.
4. Warrantless Entries into the Home & Examples

**VI. SEARCHES & TECHNOLOGY**

1. New and Developing Areas of Technology
- a. Thermal imaging. *Kyllo v. U.S.* (2001) 553 U.S. 27.
  - b. Ariel surveillance. *California v. Ciraolo* (1986) 476 U.S. 207.
  - c. Facial recognition.
  - d. Stingray devices. PC 1546-1546.4
  - e. Automated license plate readers. Civ. Code section 1798.90.5; *U.S. v. Williams* (8th Cir. 2015) 796 F.3d 951.

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f. Pinging a cellphone. U.S. v. Jones (2012) 562 U.S. 400; People v. Barnes (2013) 216 Cal.App.4th 1508.

g. Electronic tracking devices & cellphones. U.S. v. Carpenter (2018) 585 U.S. \_\_\_\_.

h. Flashlights & Spotlights. People v. Capps (1989) 215 Cal.App.3d 1112.

i. Binoculars. People v. Arno (1979) 90 Cal.App.3d 505.

j. Night Vision Goggles. People v. Lieng (2010) 190 Cal.App.4th 1213.

k. Controlled Tire Deflation Device. U.S. v. Guzman (9th Cir. 2009) 573 F.3d 865.

l. Videotaping police activities. People v. Maury (2003) 30 Cal.4th 342.

m. Metal detectors. In re Latasha W. (1998) 60 Cal.App.4th 1524.

n. Dogs. People v. Mayberry (1982) 31 Cal.3d 335.

o. Cellphones, computers, and other tech devices. Riley v. California (2014) 573 U.S. \_\_\_\_;

p. Cell tower records

2. CALECPA, PC §§ 1546-1564.4.