

EXPANDED COURSE OUTLINE
REGULAR BASIC COURSE
LEARNING DOMAIN 16
SEARCH AND SEIZURE

Effective date of outline: February 15, 2017

I. LEARNING NEED

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

LEARNING OBJECTIVES

A. Recognize constitutional protections guaranteed by the Fourth Amendment

1. The protection of unreasonable searches and seizures
2. No warrants to be issued without probable cause

B. Identify the concept of reasonable expectation of privacy

1. Individuals have indicated that they personally (subjectively) expect privacy in the object or area, and
2. Their privacy is one which society is prepared to recognize as legitimate

C. Recognize standing and how it applies to an expectation of privacy

1. Standing is when a person has legitimate possessory interest or relationship over an object or own person.
2. To challenge a search or seizure a person must have a reasonable expectation of privacy on what was searched or seized.

D. Recognize probable cause to search and its link between Fourth Amendment protections and search and seizure law

1. Probable cause to search an area or object means having enough facts.
2. To provide a fair probability and to provide a substantial chance that the item sought is located in the place searched.

E. Recognize how the exclusionary rule applies to a peace officer's collection of evidence

1. If the courts find that a search or seizure is not reasonable and that a person's fourth amendment rights have been violated by the government, all items seized during the search could be inadmissible or excluded as evidence at trial.

II. LEARNING NEED

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

LEARNING OBJECTIVES

- A. Recognize how probable cause serves as a basis for obtaining a search warrant
 - 1. Obtaining credible information to provide a fair probability that the object the peace officer seek will be found at the place they want to search.
- B. Recognize the necessary conditions for securing an area pending issuance of a search warrant
 - 1. To establish a crime has occurred or is about to occur.
 - 2. Evidence pertaining to the crime exists
 - 3. The evidence is at the location they wish to search.
- C. Identify the time limitations for serving a search warrant
 - 1. Penal code 1534 states that the search warrant shall be executed and returned within 10 days from issuance.
 - 2. Normally a search warrant is served between 0700 to 2200 hours.
- D. Recognize the elements for compliance with the knock and notice requirements when serving a search warrant
 - 1. Knock or otherwise announce their presence
 - 2. Identify themselves a peace officers
 - 3. State their purpose
 - 4. Demand entry
 - 5. Wait a reasonable amount of time
 - 6. If necessary, forcibly enter premises.
- E. Recognize the application of the Nexus Rule while conducting an authorized search
 - 1. Officers may seize items not listed in the warrant: If discovered while conducting a lawful search for the listed evidence.
 - 2. They have probable cause to believe the item is contraband

III. LEARNING NEED

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

LEARNING OBJECTIVES

- A. Recognize why a plain view seizure does not constitute a search
 - 1. Officers sees item in plain view from a place officer has lawful right to be at
 - 2. Owner has no reasonable expectation of privacy for items which are in plain view.
 - 3. Without expectation of privacy, owner has no Fourth Amendment protection.
- B. Recognize the legal requirements for seizure of items in plain view
 - 1. Probable cause
 - 2. Lawful right to be in the location

3. Lawful access to the item
- C. Recognize the conditions and circumstances where warrantless searches and seizures are considered reasonable and legal
1. Cursory/frisks
 2. Consent searches
 3. Searches pursuant to exigent circumstances
 4. Searches incident to custodial arrest
 5. Probation/parole searches
- D. Recognize the scope and necessary conditions for conducting the following types of warrantless searches:
1. Cursory/frisks/pat searches
 2. Consent searches
 3. Searches pursuant to exigent circumstances
 4. Searches incident to arrest
 5. Probation/parole searches

IV. LEARNING NEED

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

LEARNING OBJECTIVES

- A. Recognize the scope and necessary conditions for conducting the following types of motor vehicle searches:
1. Probable cause searches
 2. Seizures of items in plain view
 3. Protective searches
 4. Consent searches
 5. Searches incident to custodial arrest
 6. Instrumentality searches
- B. Recognize the scope and necessary conditions for conducting a vehicle inventory
1. To examine inventories, permitting examination of any area where valuable and dangerous areas are kept.
 2. When property of person whose vehicle has been impounded or stored
 3. To prevent agency from false claims of loss

V. LEARNING NEED

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

LEARNING OBJECTIVES

- A. Recognize the legal framework establishing a peace officer's authority to seize physical evidence from a subject's body:
 - 1. With a warrant
 - 2. Without a warrant
- B. Recognize conditions under which a peace officer may use reasonable force to prevent a subject from swallowing or attempting to swallow evidence
 - 1. Officers may use reasonable force to overcome suspect's resistance and recover evidence.
 - 2. Force used that would shock the conscience **is not** permissible
- C. Recognize the conditions necessary for legally obtaining blood samples
 - 1. Probable cause
 - 2. Conducted by trained personnel
- D. Recognize the conditions for legally obtaining the following evidence:
 - 1. Fingerprints
 - 2. Handwriting samples

VI. LEARNING NEED

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

LEARNING OBJECTIVES

- A. Identify the importance of a peace officer's neutral role during an identification procedure
 - 1. Officers should not do anything that suggest or could be interpreted as suggesting which suspect to select during any type of identification procedure.
- B. Identify officer actions before, during, and after an identification procedure to prevent impermissible law enforcement suggestiveness when conducting a:
 - 1. Field show up
 - 2. Photographic spread
 - 3. Custodial lineup

VII. REQUIRED TESTS

- A. The POST-Constructed Comprehensive RBC Test 1.
- B. The POST-Constructed Comprehensive RBC test 2.
- C. The POST-Constructed Comprehensive RBC test 3.

VIII. REQUIRED LEARNING ACTIVITIES

- A. The student will participate in one or more learning activities from the POST-developed *Instructor's Guide to Learning Activities for Leadership, Ethics and Community Policing* or other comparable

sources regarding search & seizure. At a minimum, each activity, or combination of activities must address the following topics:

1. Examples of resources within a community that may help an officer establish probable cause to obtain a search warrant
2. Fairness, trustworthiness and respect as it relates to duties performed by an officer during searches and seizures
3. Ability to balance officer safety with the protection of individual rights and the preservation of property
4. Legal and agency policy issues

<u>Description</u>	<u>Hours</u>
POST Minimum Required Hours	<u>12</u>
Agency Specific Hours	<u>4</u>
Total Instructional Hours	<u>16</u>