

# Criminal Procedure - Constitutional Searches and Arrests

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## I. CONSTITUTIONAL BASIS:

A. 4<sup>th</sup> Amendment: *"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."*

B. The basic, bedrock principle is that all governmental searches, seizures, and arrests must be reasonable. As the constitution has evolved, "reasonable:" requires that the probable cause requirement applies to all arrests, seizures and searches, with or without a warrant.

C. Search, seizure, arrest, must be either with a warrant, or if without a warrant, reasonable.

D. Preference for warrants

## II. ARREST:

A. Definition: A detention of a person on a criminal charge.

B. Police arrest:

1. In or out of uniform.
2. on duty or off.
3. specifically authorized and/or required to arrest
4. specific training.
5. based on personal observation for misdemeanors, or reliable information for felonies.

C. Citizen's arrest:

1. based on personal knowledge or crime committed in their presence.
  2. felony arrest or misdemeanor
  3. private security guards.
  4. citizen's arrest to prevent a crime.
  5. citizen's arrest only to hold the suspect until the police arrive.
  6. not all states permit citizen's arrest.
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**133.225 Arrest by a private person.** (1) A private person may arrest another person for any crime committed in the presence of the private person if the private person has probable cause to believe the arrested person committed the crime. A private person making such an arrest shall, without unnecessary delay, take the arrested person before a magistrate or deliver the arrested person to a peace officer.

(2) In order to make the arrest a private person may use physical force as is justifiable under ORS 161.255. [1973 c.836 §74]

D. Effecting arrest:

1. words or conduct
2. voluntary submission

E. Legal significance:

1. Unconstitutional arrests (unreasonable, no probable cause) are subject to the exclusionary rule.
2. Objective test: whether, under the circumstances at the time, a reasonable person would believe he or she was under arrest.
3. Examples:
  - a) Surrounded by cops, all avenues of escape blocked.
  - b) Words, language, tone of voice indicating person must obey.
  - c) Long detention, beyond reasonable
  - d) Direct words, "not free to leave."
  - e) Custody and transportation for questioning.

III. PROBABLE CAUSE: reasonable suspicion.

*Probable cause is reasonable suspicion that a crime has been, or is about to be, committed, based on the suspects statements or actions, the specific training and experience of the police officer, and the statements of witnesses or other police officers.*

A. Degree of certainty:

1. need not prove guilt beyond a reasonable doubt.
2. Rumor or gossip or speculation.
3. Independent verification

B. Basis: type of police interaction:

1. voluntary conversations
2. brief detention requires reasonable suspicion.
3. Arrest requires probable cause.

C. Terry searches: "pat-downs"

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1. brief detention
2. reasonable suspicion
3. safety requirements
4. reaching into pockets or under clothing

D. Fourth Amendment applies to arrest (full detention)

1. required for detention affected by physical force or display of authority to restrain the liberty of a citizen.
2. exclusionary rule doesn't apply to less than full detention, and then, may apply only to property, and not to prosecution.

E. Consent: eliminates probable cause or warrant requirement

F. Specific instances

1. defendant matches description of perpetrator from witness at the scene.
2. above may be radio'd ahead to other police.
3. suspicious behavior
4. confidential informants
  - a) totality of circumstances – fair probability
  - b) independent corroboration – history
  - c) anonymous phone calls
5. roadblocks
6. detention for other unrelated offenses

G. Exigent circumstances

H. Hunches

I. Profiling

1. must meet most profile criteria – brief detention
2. racial profiling

#### IV. ARREST AND SEARCH WARRANTS:

A. Warrants required of government, not private individuals.

B. Requirements

1. sworn affidavit or sworn live testimony
  2. describe with particularity the person or place or crime
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3. source of information

a) hearsay okay

b) officers or agents, citizens, informants, witnesses, victims.

4. neutral magistrate

5. good faith exception

6. Knock and announce rule.

C. When is arrest warrant not required.

1. public place plus probable cause

a) to believe that a crime was committed

b) and, that the accused did it.

2. arrest in a protected place, that is, at home, requires a warrant.

D. When is a search warrant not required

1. no subjective expectation of privacy

a) plain view

(1) protective sweep

b) open fields

c) dropped evidence

d) abandoned

e) contraband

f) stop and frisk

g) border searches

h) sniffer dogs

2. consent

E. New technology

F. Limits on warranted searches

1. reasonable time period – stale

2. not specific

3. anticipatory warrants

G. Exclusionary rule: applies to search and seizure, but not to arrest, except possible if the government conduct is both shocking and outrageous, the Toscanino rule.

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## **SUMMARY OF WARRANT RULES:**

### ***Search Warrants:***

RULE: In both federal and state cases, a warrant is required except in the following exceptions:

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|--|------------------------|
| 1. Consent   | 7. National borders    |
| 2. Terry frisks  | 8. Motor vehicles      |
| 3. Plain view and plain feel                           | 9. vehicle inventories |
| 4. Incident to arrest                                  | 10. prisoners          |
| 5. Preservation of evidence                            | 11. protective sweeps  |
| 6. exigent circumstances<br>(emergency or hot pursuit) | 12. Open fields        |

### **Arrest Warrants:**

RULE: In both state and federal arrests, arrests in a public place may be warrantless provided there is probable cause. Arrests in the home or other property of the defendant must be supported either by an arrest warrant, or a search warrant for the defendant's person. Arrests in the homes or on the property of third persons must be supported by a search warrant authorizing the search for the defendant at the particular property.

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