

# 2023

U.S. Peace Officers'  
**SEARCH**  
**AND**  
**SEIZURE**  
**SOURCEGUIDE**

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Summaries of Important Search & Seizure  
Law with Case Citations Covering:

- Arrests
- Booking Searches
- Civil Liability Issues
- Consensual Encounters
- Consent Searches
- Detentions
- Entry Issues
- Evidentiary Issues
- Inventory
- Pat Downs
- Plain View Surveillance
- Probation & Parole Searches
- Search Incident to Arrest
- Search Warrants
- Vehicle Searches

*Also Includes:*

Landmark U.S. Supreme Court Cases  
Leading Federal Appellate Rulings  
Parole Compliance Checklists

*Contains New Cases for 2023*

Devallis Rutledge



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## FIELD PROCEDURES

### BASIC PRINCIPLES

**The Fourth Amendment guarantees individuals the right to be free from unreasonable searches and seizures. It also requires that search warrants be supported by probable cause (PC), given under oath.**

Reasonableness under the Fourth Amendment is measured objectively, based on the facts and circumstances confronting you, and how a reasonable officer would react. (*Maryland v. Macon*)

Your actual, subjective motives or analysis of the situation are not controlling. (*Whren v. U.S.*)

**Reasonableness** may have up to 4 factors to consider:

1. Justification
2. Scope
3. Place
4. Manner of execution

Even though a particular search or seizure might be reasonable as to any three of these factors, unreasonableness as to the remaining factor could invalidate the search or seizure. (*Bell v. Wolfish*)

The Fourth Amendment covers 3 different kinds of police activity:

1. Searches
2. Seizures of the Person
3. Seizures of Property

**A “search” occurs when** governmental conduct infringes a “reasonable expectation of privacy.” (*U.S. v. Jacobsen*)

A “search” also occurs whenever the government “trespasses” onto the person, houses, papers or effects of another, in an attempt to gain information. (*U.S. v. Jones*)

**A “seizure of the person”** involves a restraint on a person’s freedom of movement. (*U.S. v. Mendenhall*)

A “**property seizure**” intrudes on a person’s possessory interest in that property. (*Soldal v. Cook County*)

By judicially-created exclusionary rule, evidence obtained by “direct exploitation” of unreasonable search or seizure may be suppressed from the prosecution’s case in a criminal trial. (*Mapp v. Ohio*)

**Note:** Officers and their departments can also suffer civil liability for engaging in unreasonable searches and seizures. Title 42, U.S. Code, §1983

## SEIZURES OF THE PERSON

### CONSENSUAL ENCOUNTERS

**PUBLIC PLACE:** OK to approach a person and ask questions (suspicion or justification not required), if the person chooses to talk to you. As long as you do not say or do anything to command or require the person to stop or go, this type of encounter does not trigger the Fourth Amendment. (*Florida v. Bostick*)

**KNOCK AND TALK:** No suspicion needed to attempt a consensual encounter at a suspect’s front door. (*People v. Rivera*)

**PARKED VEHICLE:** OK to approach and talk. (*People v. Jones*)

**SPOTLIGHT:** OK to shine white spot and ask to talk. (*People v. Franklin*)

**BACKSEAT:** OK to ask if the person will have a seat while you run for warrants. (*People v. Bennett*)

**MOBILE ENCOUNTER:** OK to drive alongside pedestrian. (*Michigan v. Chesternut*)

**SHOW OF HANDS:** OK to ask person to remove hands from pockets. (In re Frank V.)

**IDENTIFICATION:** OK to request to see (not demand). (*INS v. Delgado*)

**IMMIGRATION DOCUMENTS:** May ask to examine immigration documents, even though no suspicion of irregularity. (*Muehler v. Mena*)

**CONSENT TO SEARCH:** OK to request (not demand). (*U.S. v. Drayton*)

**Tip:** To take maximum advantage of the consensual encounter, do not use a command when a request will do.

**REQUIRED REPORTS (CA Government Code 12425.5):** On a four-year phased-in schedule (depending on number of sworn officers in the department), agencies must require officers to document 8 categories of information about their consensual encounters and detentions that result in a search. This data must be reported to the AG each April, following the year of collection. Consult legal advisors to determine applicability to your agency.

The 8 categories of information required are these:

1. Time, date and location.
2. Reason for the encounter or stop.
3. Result (no action, warning, citation, seizure, arrest).
4. Violation cited or warned for, if any.
5. Arrest charges, if any.
6. Race, ethnicity, gender and age of the person as perceived prior to the encounter or stop.
7. Whether consent to search was requested and given.
8. Description of property seized, if any, and basis for any search or seizure.

## DETENTIONS

**Defined: A Detention Occurs When** a person submits to something you say or do that would communicate to a reasonable person that s/he is no longer free to leave. (*U.S. v. Mendenhall*)

**Reasonable Suspicion Needed for Lawful Detention** (also referred to as “articulable suspicion,” or “founded suspicion”). (*Florida v. Royer*)

**“Reasonable Suspicion”** means specific facts, together with inferences that may be drawn from your training and experience, that reasonably suggest the person to be detained is involved in criminal activity. (*U.S. v. Cortez*)

**Scope of Police Activity During a Lawful Detention Depends on** reason for the stop, and surrounding circumstances. (*U.S. v. Sharpe*)

## EXAMPLES OF CONSENSUAL ENCOUNTERS *VERSUS* DETENTIONS

### DETENTION

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- “Hold it. Let’s see some ID. Put your hands on your head.” This would be a violation of the Fourth Amendment unless you can articulate reasonable suspicion. Ordering a person to stop, directing his movements, or blocking his path, converts the consensual encounter into a detention, which requires reasonable suspicion. Demanding ID, or making an un-consented search, converts the consensual encounter into a detention. (*Florida v. Royer*)
- Car Stops (*U.S. v. Hensley*)
- Stopping behind parked, occupied vehicle and turning on overhead red/blue lights is a detention. (*People v. Brown*)
- Pedestrian Stops (*Terry v. Ohio*)
- Use of force with intent to restrain. (*Torres v. Madrid*)

### CONSENSUAL ENCOUNTER

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- “Can I talk to you for a few minutes?”
- “Do you mind showing me your ID?”
- “Okay if I pat you down for my own protection?” No justification required—not a Fourth Amendment violation.

## JUSTIFIABLE DETENTIONS AND STOPS

### GENERAL

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**SEARCH WARRANTS** carry the limited authority to detain persons present at the premises until the search is completed. (*Michigan v. Summers*)

**CRIMINAL PROFILE** (such as a drug courier profile) consisting of several suspicious factors commonly indicative of criminal behavior. (*U.S. v. Sokolow*)



**ANONYMOUS TIP** that reliably predicts future behavior by the suspect. (*Alabama v. White*)

**KNOWN INFORMANT TIP** (*Adams v. Williams*)

**UNKNOWN INFORMANT TIP**, by one who can be identified (such as by 911 trace, license plate, or face-to-face confrontation). (*Navarette v. California*) Detailed anonymous tip corroborated by observation, about recent active crime, from informant who gives basis of knowledge and remains anonymous out of fear, supports detention. (*People v. Dolly*)

**MULTIPLE INFORMANTS:** Two or more people independently reporting criminal activity cross-corroborate each other. (*People v. Coulombe*)

## **POLICE OBSERVATIONS OF ARTICULATED SUSPICIOUS ACTIVITY.**

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### **Examples:**

- Overloaded pickup truck in convoy with car and evading police reasonably appeared to be smuggling drugs. (*U.S. v. Sharpe*)
- Van on border back road used by drug smugglers, with unusual actions by driver and passengers, supported stop. (*U.S. v. Arvizu*)
- Narcotics officer saw exchange and flight in known narcotics area. (*People v. Mimms*)
- Officer recognized person from arrest warrant list. (*People v. Conway*)

## **COLLECTIVE KNOWLEDGE OF POLICE**

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### **Examples:**

- Wanted bulletin from another agency justified car stop. (*U.S. v. Hensley*)
- Plate-check hit on registered owner. (*Kansas v. Glover*)

**TRAINING AND EXPERIENCE CAN BE COMBINED WITH information of seemingly innocent behavior to form reasonable suspicion.**

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**Examples:**

- Narcotic officer's experience justified suspicion that loose armrest hid drugs. (*Ornelas v. U.S.*)
- Sudden, unprovoked flight from approaching marked police cars in a "high-crime area." (*Illinois v. Wardlow*)

**TRAFFIC STOPS**

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**TRAFFIC VIOLATION MAY BE USED** to investigate a possible crime. (*Whren v. U.S.*)

**MAY ORDER DRIVER OUT OF VEHICLE** without any reasons or suspicion. (*Pennsylvania v. Mimms*)

**MAY ORDER PASSENGERS OUT OF VEHICLE.** (*Maryland v. Wilson*) Passengers are necessarily detained when the vehicle is stopped. (*Brendlin v. California*) This does not allow search or mandatory ID, but does permit ordering passengers to exit vehicle or remain inside. (*People v. Vibanco*)

**MAY REQUEST CONSENT TO SEARCH** during a justified detention, including a traffic stop, even if you have no suspicions that a search will reveal anything incriminating. Also, you do not have to advise detainees they are free to go before requesting consent. (*Ohio v. Robinette*)

**K-9 SNIFF FOR DRUGS OR EXPLOSIVES OK** as long as the stop is not prolonged to provide the opportunity for the K-9 sniff. (*Rodriguez v. U.S.*) "Hit" from trained K-9 is PC to search. (*Florida v. Harris*)

**MAY DEMAND ID AND ASK A FEW QUESTIONS** to confirm or dispel suspicions that justified the stop. (*Adams v. Williams*) If detainee denies having ID but has a visible wallet, you may extract it and check for ID (*People v. Long*) If detainee refuses to ID where circumstances require it, you may arrest for obstruction. (*Hiibel v. Sixth Judicial District of Nevada*)

**SOBRIETY CHECKPOINTS** if neutral and objective criteria are set to determine which cars are stopped (every car, every 5th car, etc.) for brief primary screening. (*Michigan v. Sitz*)

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